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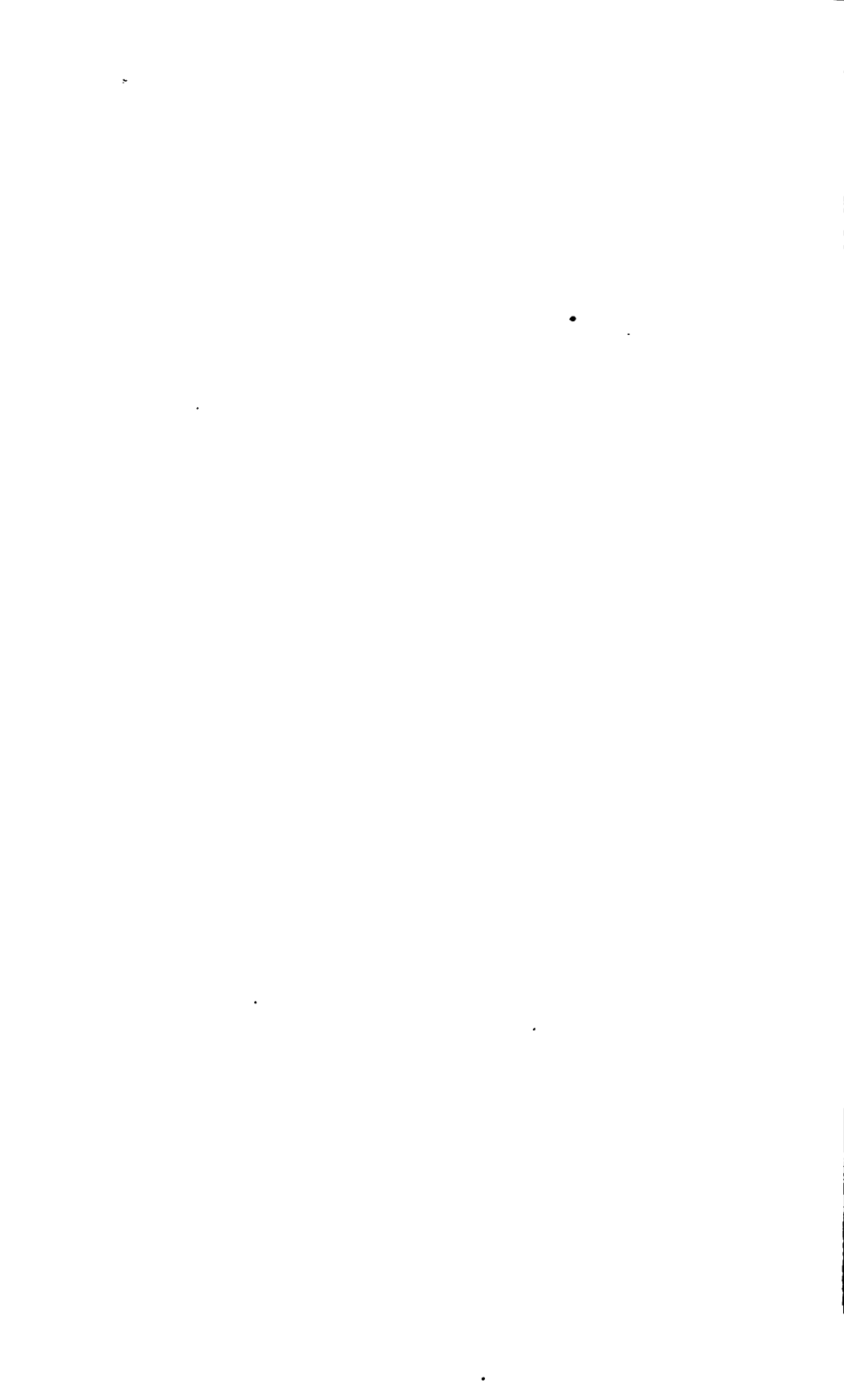
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English for the American

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SATURDAY, MAY 1, 1852.

THE LORD CHANCELLOR'S BILL.

ABOLITION OF THE MASTERS' OFFICES.

THE important Bill of the Lord Chancellor for the Abolition of the office of Master in Chancery has been printed, and in a subsequent page we have given a full analysis of all the clauses. We purpose here to direct the attention of our readers to those parts of the Bill which peculiarly affect the Solicitors, not only in their personal, but their professional interests, and necessarily therewith the interests of their clients.

The office of Master being abolished, the immediate question was,—by whom would their duties in future be performed? Their *judicial* functions will be undertaken by the Judges, and their *ministerial* by officers similar to those of the present Chief Clerks of the Masters, to be called "Judges' Clerks," selected in the first instance from the Chief Clerks of the Masters who retire, and the others from Solicitors who have actually practised for 10 years immediately preceding their appointment.

Four Masters are to retire in Michaelmas Term, and consequently four Chief Clerks will be enabled to take the office of Judge's Chief Clerk, and to these may be added the Chief Clerk of the vacant Mastership occasioned by the promotion of Vice-Chancellor Kindersley. As each Judge is to have two Chief Clerks, there will remain three to be selected, if deemed requisite, from Solicitors of 10 years' practice; but who are to hold the office only until the retirement of other Masters shall release other Chief Clerks.

It will, we presume, be admitted that, for the efficient despatch of the business to be intrusted to the Judges' Chief Clerks, the present Chief Clerks, and Solicitors of experience, are the fittest persons. It has been elsewhere recommended, that these

assistants to the Judges should have a position and a name higher than that of "Clerk," in order that the office might be acceptable to members of the Bar. It is, however, quite manifest to those who know the duties of the office, that they can only be satisfactorily executed by Solicitors of considerable practical experience. We do not, however, admit that the title of "Clerk" can be in any respect derogatory. Very eminent persons hold office and receive large emoluments under that designation.

The great question will be, in this important reform, whether it can be successfully worked out, without *additional Judges*, so as to enable them to devote sufficient time at Chambers as well as in Court: otherwise the plan will fail.

The clauses defining the qualification, duties, and emoluments of the Clerks are:—

The 17th section provides, that no person shall be appointed Chief Clerk to the Master of the Rolls or any Vice-Chancellor unless he shall have been Chief Clerk to one of the Masters in Ordinary of the Court, or have been admitted on the roll of Solicitors or Attorneys in one of the Courts at Westminster Hall, and practised as such solicitor or attorney for the period of 10 years at least, immediately preceding his appointment; and the persons so respectively first appointed Chief Clerks to every such Judge shall be selected from among the present Chief Clerks in the Offices of the present Masters in Ordinary of the said Court, and the Office of the Master, now vacant, if they shall be willing to accept such office, and shall, in the opinion of such Judge, be competent to perform the duties thereof.

By the 21st section, such Chief Clerk shall hold his office during good behaviour, and so long as he shall personally give his attendance upon his duties, and shall conduct himself honestly and faithfully in the execution of the duties of his office.

By the 45th clause the salary of the

Chief Clerk is to be 1,200*l.* a-year, with power to the Lord Chancellor to increase it to 1,500*l.*

But by the 26th section the Vice-Chancellors shall not appoint a second Chief Clerk until by the death, resignation, or release of the Masters in Ordinary of the said Court remaining in office on the first day of Michaelmas Term, 1852, there shall be a Chief Clerk at liberty to take such appointment if he shall be found competent for the performance of the duties thereof; but if before the appointment of two Chief Clerks to such Vice-Chancellors respectively it shall be found necessary by them respectively, or any of them to have further assistance in the discharge of the duties of their respective offices, it shall be lawful for each or any such Vice-Chancellor, with the approbation of the Lord Chancellor, to appoint any competent person to act in the place of a Chief Clerk; and the person so appointed shall have such powers, and be subject to the same duties, penalties and prohibitions, as the Chief Clerk has or is subject to under this Act, and shall be paid for his services such sum, either annual or in gross, as the Lord Chancellor shall think reasonable, but he shall have no claim to compensation or retiring allowance on ceasing to act in the place of a Chief Clerk, and he shall be removable at pleasure.

SUMMARY OF THE MASTERS IN CHANCERY ABOLITION BILL.

THE Lord Chancellor's Bill "to Abolish the Office of Masters in Ordinary of the High Court of Chancery, and to make provision for the more Speedy and Efficient Despatch of Business in the said Court," recites, that the proceedings before the Masters in Ordinary are attended with great delay and expense, and it is expedient that the business now disposed of in the Office of Masters should be transacted by and under the more immediate direction and control of the Judges of the Court. It is therefore proposed to enact:—

1. Abolition of the Masters' Office, subject to the completion of all matters now pending before them.

That the Office of Masters in Ordinary in Chancery be abolished, reserving the duties afterwards provided; sect. 1.

No vacancies to be filled up; 2.

The first four Masters in seniority released from their duties on the 1st day of Michaelmas Term, 1852, subject as to their attendance on the House of Lords, to the order of the House; 3.

Option to the Masters to retire according to seniority, with power to Lord Chancellor to release the remaining Masters; 4.

The Masters' salaries and compensation al-

lowance to be continued by way of retiring pensions; 5.

The retiring pensions of the Masters to be paid in the same manner and out of the same funds as the present salaries; 6.¹

Power to the Masters to summon parties, &c., and to settle and wind up proceedings now pending before them; 7.

Power to the Court upon the Master's report or certificate to make order for prosecution or final disposal of any suit, &c., and for payment of costs, &c.; 8.

The solicitor to the Suitors' Fee Fund, on the neglect of parties to bring the Master's report before the Court, directed to bring the same, and his costs provided for; 9.

No fresh references to be made to the Masters, except in cases already before them, and in matters under the Winding-up Act, or in such other cases as the Lord Chancellor shall direct, &c.; power reserved to the Masters for such purposes; 10.

2. The Judges to sit at Chambers.

Power to the Master of the Rolls and Vice-Chancellors to sit at Chambers for the despatch of business, &c.; 11.

Power to the Lord Chancellor to provide chambers for the Judges; 12.

The Judges to have the same power and jurisdiction as in open Court; 13.

Orders made in Chambers to be ordinarily drawn up by the Judges' Chief Clerks, with power to the Judges to require the attendance at Chambers of the Registrars of the Court, &c.; 14.

Orders made at Chambers by the Judges to have the same force and effect as Orders of Court, &c.; 15.

3. The Judges to appoint two Chief Clerks to each Court, being Solicitors of 10 years' practice, and the Chief Clerks to appoint Junior Clerks.

Power to the Judges to appoint two Chief Clerks to each Court to assist in the business of the Court; 16.

The Chief Clerks to the Judges to have been Chief Clerks to Masters in Ordinary, or solicitors or attorneys of 10 years' practice; 17.

Power to the Chief Clerks to appoint Junior Clerks, and such Junior Clerks in the first instance to be the Junior Clerk of a Master; 18.

Power to the Lord Chancellor to remove any officer appointed under this Act engaged in other employment, or accepting any fee or emolument whatever other than his salary; 19.

Solicitors or attorneys appointed to any office under this Act to be struck off the Rolls; 20.

The Chief Clerks to the Judges to hold office during good behaviour; 21.

¹ These retiring salaries or pensions should be paid out of the Consolidated Fund.

The Junior Clerks to hold office during pleasure; 22.

The Chief and Junior Clerks to be under the control and direction of the Judges; 23.

The Chief and Junior Clerks subject to the same penalties, &c. as imposed, &c. under Act 3 & 4 Wm. 4, c. 94, as respects officers of the Court of Chancery; 24.

Power to the Lord Chancellor, with the concurrence of Master of the Rolls and Vice-Chancellors, to remove Chief Clerks; 25.

The Vice-Chancellors not to appoint a second Chief Clerk until, by death of Masters in Ordinary, there be a Chief Clerk at liberty for such appointment; previous to such appointment, if necessary, a temporary Chief Clerk may be appointed; 26.

4. The course of proceedings at Chambers to be as follows:

Business to be disposed of in Chambers by Judges; 27.

Power to the Judges to adjourn from open Court to Chambers and *vice versa*, the consideration of any matter; 28.

Mode of proceeding before the Judges at Chambers to be by *summons* as at Common Law; 29.

Power to the Judges to direct what matters, &c. shall be investigated by themselves, what by their Chief Clerks; right to suitor to bring any point before the Judge; 30.

Power to the Chief Clerks to issue advertisements and summonses, to administer oaths, &c. as the Judge shall direct; 31.

Parties, &c. not attending liable to process of contempt, and to penalties for false swearing, &c.; 32.

The result of proceedings before the Chief Clerk to be embodied in form of *short certificate*, &c.; 33.

No exceptions to lie to certificate, &c.; parties at liberty to take the opinion of the Judge upon any particular point; 34.

Certificate, &c. signed and adopted by the Judge, binding on all parties unless discharged or varied; 35.

The certificate, &c. to be drawn up, if necessary, in the form prescribed by General Order of the Lord Chancellor; 36.

3 & 4 Wm. 4, c. 94, ss. 13, 14, and 15 repealed; 37.

Power to the Judges to exercise the powers given by sections 7, 8, and 9 of this Act, and to dispose of any cause, &c. in open Court; 38.

5. General Rules and Orders to be made by the Judges.

Power to the Lord Chancellor, with advice, &c. of the Judges to make Rules and Orders for regulating the mode of procedure at Chambers, &c.; 39.

Business of their offices to be conducted in the same manner as similar business is conducted by Judges; 40.

6. Appointment of conveyancing counsel in certain matters:

Power to Judges at Chambers to take the opinion of conveyancing counsel in the investigation of titles, the settlement of conveyances, &c.; power to parties to object to opinion, and objection to be disposed of in Chambers or open Court; 41.

Power to the Lord Chancellor to nominate not less than six conveyancing counsel of 10 years' practice, &c. and to supply vacancies and distribute business; 42.

7. Assistance of accountants, engineers, &c. may be obtained:

Power to obtain the assistance and to act upon the certificate of accountants, merchants, engineers, actuaries, &c.; 43.

Taxing Master of the Court of Chancery to regulate fees to be allowed to conveyancing counsel, accountants, &c., subject to appeal; 44.

8. Salaries of Chief and other Clerks and compensations:

Salary of 1,200*l.* to be paid to each Chief Clerk, and 250*l.* to each Junior Clerk, with power to the Lord Chancellor from time to time to increase same to 1,500*l.* and 300*l.* respectively; 45.

Power to the Masters' Chief Clerks not appointed Chief Clerks to any of the Judges to make claim for compensation to Commissioners of her Majesty's Treasury, &c. Compensation may be made to Chief Clerks to Masters not appointed to office under this Act; but if appointment offered and refused, no compensation to be made; 46.

Salaries, &c. to be paid quarterly out of the Suits' Fee Fund Account; 47.

Payment of compensations to be made quarterly, out of Parliamentary Securities; 48.

On appointment to office under the Crown, the retiring pension under this Act to be regulated by the salary, &c. of such office; 49.

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9. Appointment of Third Vice-Chancellor, officers, salaries, &c.

Her Majesty empowered to appoint a Vice-Chancellor as successor to Sir G. J. Turner; 51.

Status of such Vice-Chancellor; 52.

Officers and attendants to the Vice-Chancellor; 53.

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Her Majesty may grant retiring pension to Vice-Chancellor so appointed; 55.

The Lord Chancellor may appoint Court-keepers; 56.

Nothing to affect the rights, &c. of Accountant-General as a Master in Ordinary; 57.

LIABILITY OF SHAREHOLDER IN INSURANCE COMPANIES.**RECENT DECISION.**

THE uncertain and unsettled state of the law as regards the responsibilities of shareholders in insurance companies—as evidenced by recent decisions—is calculated materially to affect the prosperity of those most useful institutions, and considering the daily increasing number of persons interested as policy holders, insurers, or otherwise, and the large amount of capital embarked, the question assumes a degree of social importance which will justify early legislative interference in the absence of a decided concurrence of judicial opinion.

Happily, the affairs of insurance companies are in general conducted with so much prudence, and their ability and readiness to discharge all admitted claims, so clearly manifested, that questions as to the liability of individual shareholders have not been of very frequent recurrence. It is only when, from some defect in the original constitution of the society, or from mismanagement of the funds, there are not available resources to meet undisputed demands, that the difficulty has arisen of enforcing claims against individual shareholders.

As our readers are aware, the policies issued by most insurance companies contain a clause limiting the liability of shareholders under the policy to the amount of their respective shares. It has also been usual in companies of this description, not to call upon the subscribers to pay up the whole amount of the shares for which they have subscribed, but to leave in the hands of the shareholders a portion of the capital, which has generally been regarded by insurers as a reserved fund liable to meet their demands, and for which the subscribers may be called upon in any exigency. So general has been the practice just adverted to, that we are informed, amongst the numerous insurance companies of various denominations existing in this kingdom, there is only one unincorporated company in which the whole amount of the shares has been paid.

It would appear, however, from the report of the case of *Hallett and others v. Dowdall*,¹ argued at the close of last year in the Exchequer Chamber, where it was taken by writ of error from the Court of Queen's Bench, that in default of payment of an indisputable claim by an insurance com-

pany, the legal rights of creditors and the liabilities of shareholders are both involved in considerable uncertainty, and that the law cannot be understood to be in a satisfactory state.

The action in the case referred to, was brought against five shareholders of the General Maritime Assurance Company, upon a time policy for 1,100*l.*, signed by three directors, effected on a ship and cargo. It was stipulated in the policy, "that the capital stock and funds of the Company" should *alone* be liable to answer claims or demands under the policy, that no proprietor of the company should be liable by reason of the policy beyond the amount of his shares in the capital stock of the company, it being one of the original and fundamental principles of the company that the individual responsibility of the proprietors should, under all circumstances, be limited to their respective shares in the capital stock.

The assured having incurred a total loss, brought an action of assumpsit on the policy against five of the shareholders, two of whom happened to be directors, but neither of whom had actually signed the policy.

One of the defendants pleaded, that he did not promise in manner and form as in the declaration alleged; and also, that the capital stock of the company was not sufficient to pay the plaintiff the amount insured, or any part thereof. At the trial it appeared that the defendant who had pleaded these pleas, was a director and had signed the deed of settlement, that the capital of the company was 1,000,000*l.*, divided into 10,000 shares of 100*l.* each, that the deed of settlement provided that the business might be carried on, although the whole of the capital was not subscribed for, and that the directors were empowered to accept proposals for insurance and to grant policies in the form now declared upon. Lord Campbell, who tried the action, was of opinion that upon the evidence the plaintiff was entitled to a verdict, and he advised the jury that, although the company had no money in hand, yet they had available capital stock and funds, whilst a portion of the capital stock sufficient to pay the plaintiff remained uncalled for. The ruling of the Lord Chief Justice was the subject of a bill of exceptions, which was argued in the Court of Error, before Barons Parke, Alderson, Platt, and Martin, and Justices Cresswell, V. Williams, and Talfourd.

All the Judges sitting in the Court of Error appeared to think, that the *Lord*

¹ Reported 21 *Law Jour.* p. 98, Q. B.

Chief Justice of the Queen's Bench was right in directing the jury, that each individual shareholder was liable to the extent of his unpaid subscription, and therefore, that the capital funds and stock of the company consisted, not merely of the capital in hand, but of the amount of the uncalled for subscription; but a majority of the Judges, in the proportion of five to two, were of opinion, that the policy did not create a joint liability that could be enforced by action against individual shareholders, and upon this ground the decision of the Court of Queen's Bench was reversed. The two Judges dissenting from the opinion of the majority and who conceived that the judgment of the Court of Queen's Bench ought to be affirmed were, Justices Cresswell and V. Williams.

It seemed to be conceded, that the stipulation that each subscriber should be responsible to the amount subscribed by him, was valid as amongst the shareholders themselves, but, as respected third persons who had no notice of such a restriction, it was wholly inoperative. Where, as in the principal case, the policy contained a notice of the restricted liability, the question arose, not only to what extent were the individual shareholders liable, but were they in any case jointly liable?

It was thrown out by more than one of the Judges, that the individuals who actually signed the policy might be considered as personally contracting that the funds of the company should be applied to meeting any claim arising upon the policy; whilst another learned Judge explicitly stated that, in his opinion, the signature of the directors was added merely to testify the contract, and that it did not increase their liability beyond that of any other of the contracting parties,—that is to say,—of any members of the company authorising the contract. The whole difficulty was said to arise from the modern practice of allowing part of the capital stock to remain unpaid upon the shares, and it appears to have been assumed that it would be a good plea, in an action founded on a policy containing the provision that the insurers should look only to the capital stock, that all the capital stock was spent; but yet, it was observed, that there was no provision that where a shareholder paid up his own shares in full he should not still be liable to the insurers in proportion to the number of shares held by him. More than one of the Judges further suggested, that the clause restricting the liability of the shareholders to the amount

of the shares subscribed for by them individually, was insensible and uncertain, and therefore inoperative, and that it was void as repugnant to the contract of insurance entered into by the policy.

Upon the whole, the judgment of the Court of Exchequer Chamber, adverse as it is to that of the Court of Queen's Bench, and not being unanimous or proceeding upon any distinct or admitted principle, leaves the question in a most unsatisfactory state as regards the rights and liabilities of both insurers and insured. As the matter now stands, the Judges of the Queen's Bench and the Barons of the Exchequer appear to have formed conflicting opinions, whilst the views of the majority of the Judges of the Court of Common Pleas is unascertained, two having pronounced with the Queen's Bench and only one for the reversal of the judgment of the Queen's Bench, whilst Lord Chief Justice Jervis and Mr. Justice Maule have given no opinion. The matter remains to be decided by the House of Lords, or by, what would be still more satisfactory, a Legislative declaration of the law.

METROPOLITAN GRAND JURIES ABOLITION BILL.

THE Bill introduced by the Attorney-General for the purpose of abolishing Grand Juries in the Metropolitan District has been printed, and its preamble embodies the observation with which its announcement was accompanied,—namely, that the arrangements in force in the Metropolitan district for the investigation of criminal charges preparatory to trial, justify the proposal to dispense with Grand Juries in this district. The preamble of the Bill recites, “that it is expedient that charges intended to be brought to trial at the Central Criminal Court, or at sessions of the peace holden within the city of London, or the metropolitan police district, should be made before a justice or justices of the peace previously to trial, and by reason of the improvements which have been effected in the administration of criminal justice within the district under the jurisdiction of the Central Criminal Court, and within the metropolitan police district, the intervention of a Grand Jury previously to trial at the Central Criminal Court, and at such sessions of the peace as aforesaid, may be conveniently dispensed with, and that it is expedient otherwise to amend the Criminal Law as hereinafter mentioned.”

It is proposed to carry out the main object of the Bill by abolishing the proceeding

by indictment and substituting an information which is to be filed by an officer of the Court, but it is expressly provided that no such information shall be filed, unless the charge has been previously made and investigated before a justice of the peace in the manner prescribed by law with respect to indictable offences, and the person accused has been committed, detained in custody, or bound by recognizance, to appear for trial. If the charge is made and investigated before *one* justice and he refuses to commit, such justice shall, if required, order the accused to be detained or bound in recognizance to appear before *two* justices, and such last mentioned justices shall proceed to investigate the charge as if it had been made before them in the first instance. If the two justices refuse to detain, or commit, or bind over the accused to take his trial, the information may nevertheless be filed under the direction of the Attorney-General given under his hand.

Prosecutions for treason or misprision of treason are altogether excluded from the operation of the act, the intention being, that in such cases, happily of rare occurrence, the proceedings shall take place under a special commission. It is also proposed to enact that no information filed under this act shall be removed by certiorari to the Court of Queen's Bench, unless when there is reason to suppose that a fair trial cannot be had in the Court below.

The Bill contains some miscellaneous provisions of considerable importance which appear to be generally beneficial. There is a provision, however, the expediency of which seems somewhat questionable. It is intended to enact, that any person accused of larceny, or of any misdemeanour, may, if he confess the charge, and desire to be summarily dealt with, be punished on summary conviction. Now there is a class of misdemeanours with which persons not in the lowest walk of life are occasionally charged, and it seems to be throwing too great a responsibility upon a single magistrate to oblige him to dispose of such cases summarily, even with the consent of the accused parties. It is only in cases where the accused admits his guilt and desires that the punishment should be summarily adjudged, that the power can be exercised,—the accused therefore can have no just ground for complaint,—but the public as well as the individual are concerned in the result, and cases may be readily conceived in which the

judgment of a single magistrate, taken in his own office, may not be satisfactory.

On the whole, however, the Bill seems to be universally considered as an improvement in criminal procedure.

REMOVAL OF THE COURTS.

THE completion of the two Houses of Parliament, so far as relates to the chambers of meeting, and the progress made in the other parts of the Palace of Westminster, will soon render it necessary to determine the fate of the present Court rooms adjoining Westminster Hall. The large increase of the number of the Courts of Equity seems to preclude the possibility of providing even tolerable accommodation on the present site. The temporary places which have been appropriated to the Vice-Chancellors are miserably inconvenient, as shown in the extracts we made last week from the public journals. Even the Court of the Master of the Rolls, if large enough in itself, is inconvenient in position. It will be recollected that formerly there was only one Equity Court sitting at Westminster,—that of the Lord Chancellor. The Master of the Rolls held his sittings in the evening at the Rolls Court, Chancery Lane. There are now six Courts almost continually sitting, and *Nisi Prius* and Practice Courts are also wanted for the Common Law Judges.

Such being the lamentable state of things, it seems impossible longer to delay the erection of a *Great Hall of Justice*, large enough to comprise all the Courts of Law and Equity, and the offices connected therewith. If constructed near the Inns of Court, on the borders of the two Cities of London and Westminster, the *Nisi Prius* Sittings might also be held there, and perhaps also the Bankruptcy Courts.

There can be no doubt that the site of the present Courts at the side of Westminster Hall would afford the means of a very important improvement in the completion of the Palace. The present building is of a different order of architecture to the Houses of Parliament, and must evidently be removed. The question then is, *Where can the Courts be removed to?* The convenience both of the Public and the Profession unite in selecting the ground between the Temple and Lincoln's Inn, bounded by Chancery Lane on the east and New Inn and Clements Inn on the west.

We subjoin some further remarks extracted from the public journals.

The following is the letter of "A Barrister" of the Temple, which recently appeared in *The Times* :—

"The recent petition of the Incorporated Law Society for the removal of all the Courts from Westminster to their natural locality of the Inns of Court has again drawn the public attention to this subject. That petition contains abundant and most forcible reasons for the change, but there is one omitted which I think will be of great weight with all law reformers. The fusion of Law and Equity, or, in other words, the administration of justice by one harmonious system, is daily gaining supporters; and the union of all the Courts under one roof would most materially forward this desirable object. Each branch of the Bar would then know more of the other, and would learn by actual experience the respective merits and defects of both systems. If, as is certain, the Common Law Courts will possess the power of granting injunctions, and of ordering specific performance, and on the other hand the Courts of Equity will avail themselves of *voir dire* examination of witnesses, the mere fact that all the Bar were close at hand would insure to litigants the attendance of counsel fully qualified for all their duties. Each would learn of the other, and each would be competing with the other, and the Profession no less than the public would be the gainers. Now, the mere distance often compels the suitor to forego the advantage of the counsel best qualified for his particular cause. The public may rely upon it the separation of the systems would not long survive the opening of the new Palace of Justice."

THE REPEAL OF THE CERTIFICATE DUTY.

At the time we go to press, the financial statement of the Chancellor of the Exchequer has not been made, and it is of course useless to indulge in conjectures on a subject which on Saturday morning will be known to all our readers. All that it may be necessary to say is, that we are well assured the parties to whom the introduction of the Bill is confided, will do their duty in pressing forward the measure if the decision of the Government should be unfavourable. If the House of Commons had not already, in two several Sessions, decided in favour of the abandonment of the Tax, and if it produced an amount so large as to disturb the arrangements for the year, it might be deemed unreasonable to press the new Government for relief. But under all the circumstances of the case it appears to be perfectly justifiable to proceed to another division, which it may be expected will settle the question at once. We cannot

anticipate that the present Chancellor of the Exchequer will follow the example of his predecessor in opposing the Bill at every stage.

If there were no other argument in favour of the repeal, the diminution of the emoluments of the Profession by the alterations constantly taking place in the Law, would be sufficient to support the claim, and in common justice, as well as policy, to remove the burthen.

We submit to our readers the following Petition from Cork, which places the case in somewhat a different aspect from the usual form of these appeals to Parliament :—

PETITION OF THE SOLICITORS OF CORK.

THIS petition states, *inter alia*, that the Profession of Solicitors and Attorneys requires educational attainments of a high order, involving a large expense, and that in addition thereto the probationary period of apprenticeship charged with an outlay amounting on an average to a sum of 400*l.*, of which about 150*l.* is payable for stamp duties incident to the articles of apprenticeship and admission into the Profession, which have hitherto produced an average annual income to the Crown of 20,000*l.*, exclusive of the Certificate Duty.

That, notwithstanding such admission into the Profession, after five years' laborious application and study, and after such large expenditure, solicitors and attorneys are nevertheless prohibited, under a penalty of 100*l.*, from pursuing their Profession, unless upon payment of the said Certificate Tax of 8*l.* per annum.

That the petitioners submit such tax is unjust, partial, and invidious in its operation: it is unjust, as being a tax upon intellectual exertion, which is liable to be impaired by infirmity and ill health; it is partial, as being exclusively applicable to the Profession of the petitioners, who also bear their proportion of the general taxation in common with all her Majesty's subjects, equal to three-fourths of the taxes imposed on all other callings; and it is invidious, because it is a lowering and degrading mark upon a learned and respectable Profession.

That the Solicitors and Attorneys of the United Kingdom, as a class, hold a high and influential position, possessing the confidence of the community for their learning, their skill, and their integrity, and having the fortunes and properties of all classes daily influenced by their guidance and judgment; and that they are not less respectable in their position and conduct than the other learned bodies, all of whom are wholly exempt from such a tax.

That the professional duties of Solicitors and Attorneys are onerous, and attendant with great responsibility, the remuneration of which is frequently postponed for years, and sometimes wholly lost; and that by the operation

of certain changes in the proceedings and practice of the Courts of Law and Equity, under legislative enactments, professional emoluments have been considerably diminished.

That Barristers are not taxed, whilst they enjoy advantages vastly superior to those extended to Attorneys. As a Profession, the members of the Bar are the recipients of nearly the entire of the patronage connected with the administration of justice in these countries and in the Colonies.

That the petitioners have observed with pleasure the prosperous financial condition of the United Kingdom, which emboldens your petitioners to hope that this tax, so unjust in principle, so degrading to the Profession of petitioners, and so partial and unequal in its application, can be repealed without affecting the general resources of the revenue of the country.

QUESTIONS AT THE EXAMINATION.

Easter Term, 1852.

I. PRELIMINARY.

1. WHERE, and with whom, did you serve your clerkship?
2. State the particular branch or branches of the law to which you have principally applied yourself during your clerkship.
3. Mention some of the principal law books which you have read and studied.
4. Have you attended any, and what, law lectures?

II. COMMON AND STATUTE LAW, AND PRACTICE OF THE COURTS.

5. What is the difference between a simple contract debt and a specialty debt? and when are they respectively barred by the Statute of Limitations?
6. What actions ought to be brought in the County Court, and what penalty is imposed when an action, which ought to be so brought, is brought in a Superior Court?
7. In what actions have the County Courts concurrent jurisdiction with the Superior Courts?
8. If the defendant wishes to inspect a deed in the possession of the plaintiff, what course is to be adopted? and what course was it necessary to adopt previous to the recent alteration of the law in this respect?
9. If a Judge of a County Court proceed to hear a plaintiff after it is proved before him that he has not jurisdiction, has the defendant any, and what, means of staying the proceedings?
10. *A.* gives a bond to *B.* of 1,000*l.*; *B.* assigns the bond to *C.* Is it necessary to sue *A.* on the bond: in whose name must the action be brought?
11. Can a plaintiff be nonsuited against his will? and in what respect is it more advantageous to him that he should be nonsuited, than that a verdict should pass for the defendant?
12. What is the effect of withdrawing a

juror on a trial? and does it prevent a plaintiff bringing another action for the same cause?

13. In an action on a bill of exchange, drawer against acceptor, the defendant pleads payment only, what must the plaintiff prove?

14. If the only witness to a deed is dead, how is the execution of it to be proved?

15. Plaintiff obtains a verdict, which is set aside, and a new trial granted. Plaintiff neglects to give fresh notice of trial; what course should the defendant take to make an end of the action?

16. Can anything besides goods be taken in execution? If so, state what, and in whose hands, and by what modes of proceeding?

17. What is a sequestration, and to what species of property does it apply?

18. *A.* recovers against *B.* 15*l.* for his debt and 25*l.* for costs. Can he issue execution against the body as well as the goods of the defendant?

19. In what cases can a plaintiff be called upon to give security for costs?

III. CONVEYANCING.

20. What difference would it make, either at Law or in Equity, if the purchase-money of an estate had been contributed in unequal shares?

21. Under what circumstances is a tenant for life entitled to cut timber for his own benefit, or to grant leases?

22. When money is directed by a deed or will to be laid out in the purchase of lands directed to be entailed, may a tenant in tail, who would be entitled to the lands when so purchased, gain possession of the money without carrying such direction into effect? and if so, by what means?

23. Is a tenant for life bound to pay off incumbrances on the inheritance, or to keep down the interest? and if a tenant for life discharge incumbrances, what is the consequence? and what if a tenant in tail discharge them?

24. Will a chattel interest support a remainder?

25. How is property legally classed, and how denominated, and upon what principle is it that property is so classed or distinguished?

26. What is the difference between a jointure and a dower, and how is the former constituted, and how does the latter arise?

27. What is a voluntary settlement? and can it be defeated in any and what manner?

28. If the grantee of an annuity employ the grantor's attorney to prepare the deeds, is such attorney bound to disclose any circumstances that may affect the security?

29. Before completing a purchase, what search should be made? and what would be the consequence of not making such a search? and where and for what period should the search referred to, be made?

30. What is an equity of redemption?

31. In a register county where the vendor of real estate is both heir-at-law and devisee, is it material that the will should be registered? and is it material if he should be devisee only?

32. What is meant by "the Protector of the

Settlement" in the late Statute for the Abolition of Fines and Recoveries?

33. In any and what case of appointment will strict compliance with the terms of the power be dispensed with?

34. To vest an estate in fee simple what are the requisite words in the habendum of the conveyance, and what are the covenants in such conveyance, on the part of a vendor?

IV. EQUITY, AND PRACTICE OF THE COURTS.

35. Explain the origin and nature of the equitable jurisdiction of the Court of Chancery.

36. What is the ordinary form of a bill in Chancery?

37. State the ordinary modes of defence to a bill in Chancery, and the cases in which they are respectively applicable?

38. In what cases may a suit be instituted by claim instead of by bill?

39. What is the mode of defence to a claim?

40. Has the Court of Chancery any jurisdiction in any and what form of proceeding to declare its opinion upon any and what questions without proceeding to administer any relief consequent upon such declaration?

41. Is there any and what mode of proceeding by which the personal representatives of a deceased person may obtain protection through the medium of the Court of Chancery in respect of the debts and liabilities of the parties whom they represent without an administration suit?

42. Enumerate the several cases in which a defendant may move to dismiss a bill for want of prosecution?

43. Can a defendant in any and what cases set down a cause to be heard instead of moving to dismiss the bill for want of prosecution?

44. Explain the mode in which witnesses are examined in the Court of Chancery, and state in what case evidence by affidavit is admissible?

45. What is meant by an equitable mortgage, and to what remedy, as against the mortgagor, is an equitable mortgagee (by deposit of title deeds) entitled in the Court of Chancery?

46. What is the proper mode of proceeding to appoint new trustees in the place of deceased trustees of a will or settlement containing no power to appoint new trustees?

47. Can a solicitor who is a trustee charge the trust estate for his professional services or loss of time in any and what circumstances?

48. Explain and illustrate the general principles on which the Court of Chancery acts in adjudicating on dealings and transactions between a solicitor and his client.

49. Define the nature and extent of a solicitor's lien on papers in his hands belonging to his client, and also of his lien on a fund recovered in a suit?

V. BANKRUPTCY, AND PRACTICE OF THE COURTS.

50. State generally the object of the Bankruptcy Laws: 1st, as regards creditors; 2ndly, as respects the bankrupt himself.

51. What description of persons are subject to the jurisdiction of those laws?

52. What facts should be ascertained by a solicitor before petitioning for an adjudication in bankruptcy?

53. State generally the proceedings necessary to be taken, and by whom, in order to obtain a London adjudication?

54. What are the facts necessary to be proved before the Commissioner to warrant an adjudication?

55. Is a trader entitled to any and what notice of an adjudication in bankruptcy, and any and what time to dispute the same?

56. What is the mode of proceeding for making a debtor bankrupt under the Act for Abolishing Imprisonment for Debt on Meane Process?

57. What are the facts necessary to be stated in the petitioning creditor's affidavit of debt?

58. What is the lowest amount of debt which must be owing to a creditor to enable him to obtain an adjudication?

59. Will acts of buying only, or of selling only, constitute a sufficient trading, and under what circumstances?

60. What acts of a trader, with any and what intent concerning his creditors, are deemed acts of bankruptcy?

61. Within what period, prior to the date of the adjudication, must the act of bankruptcy be committed?

62. State what acts of a trader are deemed acts of bankruptcy?

63. How can a trader, being summoned, avoid committing an act of bankruptcy?

64. What particulars are necessary to be stated in an affidavit or deposition to prove a debt under an adjudication?

VI. CRIMINAL LAW, AND PROCEEDINGS BEFORE MAGISTRATES.

65. What are the Courts of Criminal Jurisdiction?

66. How can an indictment be removed from an Inferior to a Superior Court?

67. Is there any mode of compelling the attendance of a witness resident in Scotland or Ireland to give evidence before a Criminal Court in England?

68. Is disobedience to an Act of Parliament where no penalty is imposed a punishable offence?

69. If a magistrate refuses to take bail, what step can be taken to have the accused admitted to bail?

70. In what cases must a peer be tried by his peers, and in what cases by a jury?

71. What is a writ of *procedendo*?

72. What is the nature and jurisdiction of the Court of Quarter Sessions?

73. What is the difference between an indictment and an information, and state how the latter can be obtained.

74. What is the proper mode of laying the venue for an offence committed within the jurisdiction of the Central Criminal Court?

75. What other pleas than that of Not Guilty are admissible in criminal cases?

76. Can one person only be indicted for conspiracy?

77. What is the nature of the jurisdiction and duty of the coroner?

78. How can evidence in a foreign country be obtained in criminal cases?

79. What are the cases in which a statutory declaration must be substituted for an affidavit?

NEW RULE OF COURT.

Queen's Bench.

Easter Term, 1852.

IT IS ORDERED, that whenever a de-

fendant shall be required by law and the practice of this Court to give recognizance to appear and answer to any indictment found in this Court, or removed or to be removed into the same, it shall be added to the condition of every such recognizance that the defendant shall personally appear from day to day on the trial of such indictment, and not depart until he shall be discharged by the Court before whom such trial shall be had, unless this Court or a Judge shall think fit to dispense with such additional condition.

BY THE COURT.

METROPOLITAN AND PROVINCIAL LAW ASSOCIATION.

THE Annual General Meeting of this Association was held on Wednesday, the 21st inst., at the Offices, 8, Bedford Row. E. W. Field, Esq., in the Chair.

A detailed Report from the Committee of Management was read by the Secretary, Mr. W. Shaen, giving an account of the labours of

the Committee during the past year. After which the following resolutions were proposed and adopted:—

Resolved 1.—That the Report of the Committee of Management be received and adopted, and that it be printed and circulated, under the direction of the Committee.

2. That the following members of the Association be elected members of the Committee of Management for the ensuing year,—

Chairman.—Mr. W. H. Palmer.

Deputy Chairmen.—Mr. E. S. Bailey, Mr. G. H. Seymour.

Metropolitan Solicitors.

Mr. Chas. T. Abbott.
— Rd. Baynes Armstrong.
— Keith Barnes.
— James Beaumont.
— William Bell.
— E. Benham.

Mr. George Bower.
— T. Holmes Bower.
— James Burchell.
— E. F. Burton.
— Edward Chester.
— Henry C. Chilton.
— W. S. Cookson.

Mr. Charles Druce.
— G. Faulkner.
— E. W. Field.
— Harvey Gem.
— J. S. Gregory.
— Henry Karslake.
— T. Kennedy.

Mr. H. Lake.
— Edw. Lawrance.
— Thomas Loftus.
— C. J. Palmer.
— W. H. Palmer.
— J. J. J. Sudlow.
— John Young.

Provincial Solicitors.

Mr. T. F. Champney, *Beverley.*
— C. Ingleby, *Birmingham.*
— T. Eyre Lee, *Ditto.*
— F. Potts, *Chester.*
— John Nanson, *Carlisle.*
— R. T. Brockman, *Folkestone.*
— John Burrup, *Gloucester.*
— George Stamp, *Hull.*
— Thomas Thompson, *Hull.*
— John Sharp, *Lancaster.*
— Robert Barr, *Leeds.*
— J. Sangster, *Ditto.*

Mr. J. H. Shaw, *Leeds.*
— T. Avison, *Liverpool.*
— M. D. Lowndes, *Ditto.*
— H. H. Statham, *Ditto.*
— Jas. O. Watson, *Ditto.*
— Peter Wright, *Ditto.*
— E. A. Bromehead, *Lincoln.*
— J. Case, *Maidstone.*
— J. Crossley, *Manchester.*
— James Street, *Ditto.*
— John Sudlow, *Ditto.*
— Thomas Taylor, *Ditto.*

Mr. G. Thorley, *Manchester.*
— R. M. Whitlow, *Ditto.*
— W. Crighton, *Newcastle-upon-Tyne.*
— Joseph Peers, *Ruthin.*
— J. F. Beever, *Salford.*
— J. Webster, *Sheffield.*
— J. R. Wilson, *Stockton.*
— T. Burn, jun., *Sunderland.*
— W. Beamont, *Warrington.*
— John Lewis, *Wrexham.*
— Thos. Hodgson, *York.*
— George Leeman, *Ditto.*

3. That the best thanks of the Association be presented to Mr. E. Benham and Mr. W. H. Ashurst, jun., for their services as auditors for the past year, and that Mr. Ashurst and Mr. W. H. Domville be requested to accept the same office for the ensuing year.

4. That the cordial thanks of the Association be presented to the Committee of Management for their labours during the past year.

5. That the resignation of Mr. John Sudlow,

as Honorary Secretary to the Northern Circuit Committee, has been received by the Committee with much regret, and that the cordial thanks of the Association be presented to him, for the zealous and able way in which he has performed the duties of the office during the past four years.

6. That the best thanks of this meeting be presented to Mr. E. W. Field, for his able conduct in the chair.

PROVINCIAL LAW SOCIETIES.

Name of Society.	Name of Secretary.	Residence of Secretary.
Bristol	Henry S. Wasborough	Bristol.
Buckinghamshire	Acton Tindal	Aylesbury.
Cambridgeshire	Ebenezer Foster, jun.	Cambridge.
Cumberland	H. J. Halton	Carlisle.
Devonshire	R. C. Campion	Exeter.
Exeter	F. G. Truscott	Exeter.
Plymouth	F. Marshall	Plymouth.
Durham—		
Sunderland	Thomas Burn, jun.	Sunderland.
South Shields	John Salmon	South Shields.
Gloucestershire	John Burrup	Gloucester.
Kent	John Case	Maidstone.
Lancashire—		
Lancaster	William Dunn	Lancaster.
Liverpool	Edward Banner	Liverpool.
Manchester	James Street	Manchester.
Preston	W. W. Riley	Preston.
Preston Law Library	William Banks	Preston.
Lincolnshire	E. A. Bromehead	Lincoln.
Northamptonshire	Thomas Scriven	Northampton.
Northumberland—		
Newcastle-on-Tyne	William Crichton	Newcastle-on-Tyne.
North Shields	James Radford	Newcastle-on-Tyne.
Norfolk and Norwich	Charles S. Hutchinson	North Shields.
Somersetshire	John Munday	Norwich.
Staffordshire	William P. Pinchard	Taunton, of the Senior Club.
Wolverhampton	E. B. Gooding	Bridgwater, of the Junior Club.
Suffolk	John Willim, jun.	Bilston.
Surrey	A. H. Browne	Wolverhampton.
Sussex	James Sparke	Bury St. Edmund's.
Warwickshire	S. B. Jackaman	Ipswich.
Wiltshire	Beriah Drew	Bermondsey.
Westmoreland	Edward Cornford	Brighton.
Worcestershire	Thomas Smith James	Birmingham.
Yorkshire—	John Swayne	Wilton.
Beverley	Thomas Harrison	Kendal.
Hull	J. Brampton	Worcester.
Leeds	T. F. Champney	Beverley.
Wakefield	George Stamp	Hull.
Yorkshire	John Sangster	Leeds.
	J. Nettleton	Wakefield.
	Thomas Hodgson	York.

NOTES OF THE WEEK.

ILLNESS OF THE LORD CHANCELLOR.

LORD ST. LEONARDS has been prevented by a severe attack of influenza from sitting, either in the House of Lords or the Court of Chancery, during the last week. We are gratified, however, to be able to add, that his Lordship is now convalescent, and expects to be able speedily to resume the public exercise of his important functions.

SITTINGS IN ERROR.

The Court of Exchequer Chamber will sit on the following days, to take cases in error:—

From the Court of Queen's Bench on May 10.

From the Court of Common Pleas on May 11.

From the Court of Exchequer on May 12. And, if necessary, the Court will sit in Error on other days, to be afterwards appointed.

LAW REFORM.

The County Courts Bill has been postponed for a fortnight, by which time the Masters in Chancery Abolition Bill may be expected to have made considerable progress. We regret that the Common Law Procedure Bill is "dragging its slow length along;" but perhaps the two Chancery Bills will be sufficient for the Session.

The Suitors in Chancery Relief Bill, so far as it removes from the Suitors to the Consolidated Fund the Salaries of the Judges, is excellent,—supplying a good "instalment of justice," and we hope it will pass,—even though it falls short of the true result, and may contain some clauses of doubtful value.

RECENT DECISIONS IN THE SUPERIOR COURTS

AND SHORT NOTES OF CASES.

Lord Chancellor.

In re John Smith of Birmingham. March 31.
April 15, 16, 1852.

SOLICITOR.—IMPROPER CONDUCT AS MASTER EXTRAORDINARY.—JURISDICTION.—STRIKING OFF THE ROLL.

The Lord Chancellor will see that all the powers which are exercised by solicitors under its authority are properly executed, and therefore, without first taking the decision of a Court of Law, a solicitor was struck off the rolls who had administered an oath to an affidavit, falsely representing himself as a Master Extraordinary, and also attesting it as sworn at Tonbridge Wells, whereas it was sworn at Boulogne, for the fraudulent purpose of avoiding the necessity of giving security for costs.

UPON a motion before Vice-Chancellor Parker to take an affidavit in the suit of *Robinson v. Adams* off the file for irregularity, his Honour had directed the matter to be brought before the Lord Chancellor. The affidavit in question purported to be that of Robinson, the plaintiff in the suit, and had been filed upon an application for an injunction to restrain the defendant from assigning or dealing with certain property and for a receiver, and was attested as having been sworn at Tonbridge Wells on Feb. 28 last, before "John Smith, a Master Extraordinary in Chancery." It appeared, however, that Robinson was at Boulogne on that day, and had never been at Tonbridge Wells, but that Smith had been over to Boulogne. The object of keeping secret the fact of the plaintiff being out of England, was to avoid an order for security for costs being made.

J. Stuart, in support of the above facts; Sir W. Page Wood for Mr. Smith, who also appeared in person, and stated, that he went to Boulogne on February 26, and swore Robinson to the affidavit on the next day, but upon its afterwards occurring to him he had no jurisdiction to administer the oath at Boulogne, he arranged with Robinson to meet him on the 27th at Tonbridge Wells to be re-sworn, that place being selected, as Robinson did not wish to come to London or Folkestone, as there was a judgment out against him; that on the 28th he wrote out the jurat and signed it before leaving London for Tonbridge Wells, but Robinson failed to keep the appointment, and the irregularity of giving up the affidavit had arisen from great distress and confusion of mind consequent on the receipt of a letter announcing the severe illness of his wife.

Makins, for the plaintiff's solicitor, repudiated any knowledge whatever of the matter.

The Lord Chancellor said, the Great Seal was bound to see that all the powers which were exercised under its authority were properly executed, and that therefore it did not

appear necessary in the present case to take the decision of a Court of Law. There was no such person as Mr. Smith described himself to be on the list of Masters Extraordinary,—the person of the same name belonging to a different place, and having been appointed in a different year to that in which Mr. Smith stated himself to have been appointed. It was manifest from his own answers, that he had never been appointed a Master Extraordinary, and Mr. Smith would therefore be struck off the Roll of Solicitors. With regard to the office of Masters Extraordinary, a new rule was about to be issued with regard to their appointment, and they would, on the probable abolition of the Masters in Chancery, be for the future called officers for the taking of affidavits, or a similar name. It was quite clear the object of parties parading their names at present as having been appointed Masters Extraordinary, was to lead the world to suppose some special confidence had been reposed in them, which was not the fact. The order would be communicated to all the Courts, and the plaintiff's solicitor must explain his conduct in the matter to the Court by affidavit.¹

April 21.—*In re North of England Joint-Stock Banking Company, ex parte Nelson and others*—Appeal from Vice-Chancellor Knight Bruce dismissed with costs.

— 21.—*In re Oxford, Worcester, and Chester Junction Railway Company, ex parte Sharp*—Order limiting liability of contributory to 100 shares.

— 21.—*In re Southee*—Part heard.

— 21.—*In re Price*—Order for removal of lunatic.

Lord Justices.

Ex parte Watson, in re Watson. April 27, 1852.

BANKRUPTCY LAW CONSOLIDATION ACT.—FOREIGN FIRM.—PARTNER TRADER IN THIS COUNTRY.—JOINT CREDITORS.—ARRANGEMENT.

Held, that the 13 & 14 Vict. c. 106, s. 140, giving to a joint creditor the right to prove under a separate estate, for the purpose of voting in the choice of assignees, does not include a foreign firm, unless the existence of joint property and joint debtors of that firm in this country be proved. A petition was therefore refused for an arrangement with the creditors of a trader on his sepa-

¹ On April 21, his Lordship stated, he had read through the affidavit which had been made by the solicitor to the plaintiff who had prepared the affidavit in question, and that he was satisfied with the explanation given, and that he would be discharged from further attendance on the Court.

Makins and Bird appeared for the solicitor.

rate account in this country, who also was member of a firm in Mexico, without stating therein the names of the creditors of the foreign firm.

THIS was an appeal from an order of Mr. Commissioner *Stevenson* dismissing a petition presented by the appellant for an arrangement with his creditors. It appeared that the petitioner had entered into partnership as commission agents with certain residents at Tampico, in Mexico, under the firm of *Watson & Company*, the business being managed by the partners resident in Mexico, and the petitioner also carrying on business as a merchant at Liverpool on his separate account. It appeared that he had proposed to arrange with his separate creditors, but had failed in consequence of the opposition of a marine insurance company of which he was a member and contributory. The Commissioner dismissed the petition on the ground that it did not contain the names of the creditors of the foreign firm.

By s. 140 of the 13 & 14 Vict. c. 106, it is enacted, that "if one or more of the partners of a firm be adjudged bankrupt, any creditor to whom the bankrupt is indebted jointly with the other partners of the firm, or any of them, shall be entitled to prove his debt, for the purpose only of voting in the choice of assignees, and of being heard against the allowance of the bankrupts' certificates, or of either of such purposes; but such creditor shall not receive any dividend out of the separate estate of the bankrupt until all the separate creditors shall have received the full amount of their respective debts."

Rolt and *W. M. James* in support of the appeal; *Bacon* and *Selwyn*, contra.

The Lords Justices said, that the order of the Commissioner was clearly right in treating all the creditors of the firm at Tampico, in which the appellant was a partner, as creditors, and to be therefore inserted in the schedule to the petition. The appeal was accordingly dismissed.

April 21.—*Mayor of Berwick v. Murray*—Decree of the late Vice-Chancellor of England varied.

—22, 23.—*Clifford v. Turrill*—Application dismissed.

—23.—*Bolton v. Powell*; *Howard v. Earle*—Appeal from the Master of the Rolls dismissed with costs.

—23.—*Westwood v. Southey*—*Cur. ad. vult.*

—24.—*In re Hamblin's Trust*—Order by consent on petition for transfer of charitable funds to trustees approved by the Master.

—24.—*Sharp v. Taylor*—Judgment varied of the late Vice-Chancellor Wigram.

—24.—*Waters v. Taylor*—Reference to the Master to take accounts, &c.

—26.—*Bims v. Helling*—Stand over.

—26, 27.—*Money v. Jordan*—Part heard.

Master of the Rolls.

Jones v. Fowall. Jan. 27; March 29, 1852.

TRUSTEE.—BREACH OF TRUST.—INTEREST AT 5 PER CENT. WITH ANNUAL RESTS.

A trustee was held liable to interest at 5 per cent. with annual rests where he had omitted to call in, pursuant to the deed of settlement, a sum which was lent to himself and other parties in partnership as bankers, upon the death of the tenant for life and the cestui que trust being an infant at the time, and had not invested it as directed in real or Government securities.

UPON the marriage of the plaintiff's parents in 1830, a debt of 350*l.* which had been lent to a banking firm in which the defendant was a partner, at 5*l.* per cent. interest, was assigned to the defendant and others in trust to stand possessed thereof for the sole and separate use of the mother for life and with a power of appointment, and it was provided that the trustees should call in the debt with interest, during the life of the mother, whenever requested by her so to do, and upon her decease to call it in and invest it on Government or real security. It appeared that the mother died without having required the money to be got in and without having ever exercised her power of appointment, leaving the plaintiff, her only child, an infant, and that the money had not been called in.

This bill was filed for an account of the profits arising from the use of the moneys in the defendant's business, and payment thereof, or for repayment of the 350*l.*, with interest at 5*l.* per cent., with annual rests.

James and *Selwyn* for the plaintiff; *R. Palmer*, *Elmsley*, and *Eddis* for the defendants.

Cur. ad. vult.

The Master of the Rolls said, that a direct breach of trust had been committed by the defendant in not getting in and investing the fund on the death of the mother. If that had been done, the fund would have produced the plaintiff compound interest, as he was an infant, and his father was able to maintain him. The neglect to pay off the money was a tacit acknowledgment that its retention was beneficial, and the defendant must be charged with interest at 5*l.* per cent., the rate at which the loan was made, with annual rests, and as the suit was occasioned through his breach of trust, he must pay the costs.

April 21.—*Bryan v. Collins*—*Cur. ad. vult.*

—21.—*Brocklehurst v. Flint*—Judgment as to construction of will.

—22.—*In re Glamorganshire Banking Co., ex parte Maybery*—On appeal from the Master, name removed from the list of contributories.

—22.—*Hayes v. Deakin*—Injunction refused, with leave to proceed at law.

—23.—*In re Hart*—Order for delivery up of deeds by solicitor, with costs.

—23.—*Horlock v. Wilson*—Order as to priority of mortgages, and for redemption and foreclosure.

—23.—*Williamson v. Hibbert*—Demurrer to bill allowed.

April 24.—*Hoghton v. Hoghton*—Arrangement as to form of decree.

—24.—*Lodge v. Prichard and another*—Claim dismissed, with costs.

—24.—*Attorney-General v. Long*—Order on information for investment of charitable funds.

—24.—*Ex parte Lowe*—Reference to the Master.

—24.—*Littlewood v. Butterill*—On claim, judgment for plaintiff.

—26.—*Edwards v. Gelling; Gelling v. Lowden*—Reference to the Master.

—26.—*Stonor v. Stonor; Same v. Camoys*—Order as to maintenance.

—26.—*Lloyd v. Peers*—Judgment herein.

—26, 27.—*Attorney-General v. Donington Hospital*—On information, charity scheme approved of.

—27.—*Davis v. Gray*—Part heard.

—27.—*Ashwin v. Ashwin*—Judgment on special case upon construction of will.

Vice-Chancellor Turner.

April 22.—*Official Manager of the National Land Company v. Weaving*—Motion refused for a receiver, with leave to the plaintiff to receive and pay into Court rents and to make repairs.

—22.—*Eddlestone v. Collins*—Part heard.

—27.—*Gregory v. Smith*—Part heard.

Vice-Chancellor Kindersley.

Wright v. Pickstock. April 23, 1852.

TRUSTEES' ACT, 1850.—TRANSFER OF FUND INTO COURT.—BY TWO TRUSTEES, WHERE THE OTHER TWO RESIDENT ABROAD.

An order was made on petition under the 13 & 14 Vict. c. 60, for the transfer into Court by the two trustees resident in England of certain funds standing in the names of four trustees, two of whom resided abroad.

Nalder appeared in support of this petition under the 13 & 14 Vict. c. 60, for an order for the payment to the credit of this cause of certain moneys standing in the names of four trustees, two of whom were resident out of the jurisdiction, and for a vesting order to effect such transfer in the two trustees resident in this country.

By s. 22, it is enacted, that, "when any person or persons shall be jointly entitled with any person out of the jurisdiction of the Court of Chancery," "to any stock or chose in action upon any trust, it shall be lawful for the said Court to make an order vesting the right to transfer such stock" "either in such person or persons so jointly entitled as aforesaid, or in such last-mentioned person or persons together with any person or persons the said Court may appoint."

Smale, for the trustees out of the jurisdiction, consented.

The *Vice-Chancellor* made the order as asked.

April 21.—*Thornhill v. Thornhill*—Order as to allowance of money out of income for repair of parsonage house and for relief of sufferers.

—23.—*Burley v. Clarke*—Order on trustees for surrender of policy of assurance to life-office, and for proceeds to be added to fund in settlement.

—26.—*Webb v. Wools*—Judgment on construction of will.

—27.—*Atkinson v. Gylby*—Exceptions allowed to Master's report.

Vice-Chancellor Parker.

April 21.—*Great Western Railway Company and others v. Oxford, Worcester, and Wolverhampton Railway Company, and others*—Injunction refused.

—22.—*In re Universal Gaslight Company, ex parte Brooke*—On motion to discharge or vary order of Master allowing claim of creditor, reference back for reviewal.

—23.—*Lumley v. Wagner*—Injunction granted.

—24.—*In re British Alkali Company, ex parte Guest*—Petition refused to wind up the affairs of company.

—27.—*Warde v. Leigh, Leigh v. Warde*—Decree for specific performance of agreement.

Court of Queen's Bench.

Meredith v. Giddens. April 15, 1852.

COUNTY COURTS' EXTENSION ACT.—PLAIN-
TIFF'S COSTS OF ACTION.—APPEAL FROM
JUDGE AT CHAMBERS.—WHEN TOO LATE.

An application was made to a Judge at Chambers in June, 1851, for the allowance under the 13 & 14 Vict. c. 61, s. 13, of the plaintiff's costs of an action brought in the Superior Courts in which a verdict was obtained for 13s.; and upon its being refused, a rule nisi was obtained on Jan. 28, 1852, for the same purpose: Held, that such application was in the nature of an appeal, and the rule was discharged as being applied for too late.

THIS rule had been obtained on Jan. 28 last, for the taxation of the plaintiff's costs of the above action under the 13 & 14 Vict. c. 61, s. 13, and in which a verdict was recovered for 13s. It appeared that in June last an application at Chambers had been made to Mr. Justice Coleridge, but having been refused, this rule was obtained.

Jones showed cause on the ground the application was too late, nearly eight months intervening from the decision of Mr. Justice Coleridge and the present application, referring to *Orchard v. Mosey*, 43 Leg. Obs. Q. B., 279.

Piggott in support.

The Court said, the application being in the nature of an appeal from the decision of a Judge at Chambers, should have been made at all events in the term next after the decision

appealed against, and that this application was therefore too late; and the rule was discharged accordingly.

Regina v. Pollock. Jan. 30, 1852.

MERCHANT SEAMEN'S ACT.—PLAINT FOR RECOVERY OF WAGES BY SEAMAN UNDER 20L.—JURISDICTION.

A plaintiff, after a magistrate had adjudicated on the question, proceeded in the County Court to recover for the balance of wages as mate of the defendant's vessel, amounting to 18l. 5s., and on an account stated: Held, discharging with costs a mandamus on the Judge of the County Court, that he had no jurisdiction under the 7 & 8 Vict. c. 112, s. 16 (the Merchant Seamen's Act).

THIS was a rule nisi obtained on January 15 last, for a mandamus on the Judge of the Liverpool County Court to hear and determine the plaint of *Williams v. McIntyre*, which was brought to recover the sum of 18l. 5s. for balance of wages claimed by the plaintiff as mate of the defendant's vessel and on an account stated. It appeared that the plaintiff had applied to a magistrate of Liverpool who had adjudicated on the question, but the plaintiff, without drawing up the order, proceeded in the County Court, when the learned Judge refused to proceed on the ground that he had no jurisdiction, as the matter was only cognizable by a magistrate under the 7 & 8 Vict. c. 112, s. 16 (the Merchant Seamen's Act).

Tomlinson showed cause; *Cowling* in support on the ground that the plaintiff claimed unliquidated damages for his dismissal as mate and being reduced to a common seaman, referring to *Smith v. Hayward*, 7 A. & E. 544, and that the magistrate had no jurisdiction as it was not a debt.

The Court said, the application was without foundation, and the learned Judge had properly decided he had no jurisdiction. The rule was therefore discharged with costs.

April 21.—*Regina v. Hull Dock Company*—Judgment for the defendants.

— 21.—*Regina v. Avery*—Rule nisi to enter verdict for the Crown.

— 21.—*Regina v. Wilson*—On demurrer to return to mandamus, judgment for defendant.

— 21.—*Mallatieu v. Anglo-Californian Mining Company*—Rule nisi for new trial.

— 22.—*Regina v. Inhabitants of St. Mary's, Islington.*—Rule absolute for poor-rates to be assessed.

— 22.—*Regina v. York, &c., Railway Company*—Rule nisi for inspection of books.

— 22.—*Bateman v. Bluck*—Rule nisi to set aside verdict for defendant and for new trial.

— 22.—*Keane v. Stuart*—Rule absolute for new trial on payment of costs.

— 23.—*Kennet and Avon Canal Navigation Company v. Witherington*—Cur. ad. vult.

April 23.—*Broughton v. Jackson*—Rule absolute to enter verdict for defendant.

— 24.—*Regina v. Inhabitants of Slawstone*—Order of sessions affirmed quashing order of removal of pauper.

— 24.—*Regina v. Churchwardens &c., of Longwood*—Cur. ad. vult.

— 26.—*Regina v. Ramsdale*—Judgment on indictment for non-repair of highway.

— 26.—*Regina v. Mayor of Morpeth*—Rule absolute for mandamus on defendants to proceed to election of auditors and assessors.

— 26.—*Regina v. Mason*—Certiorari to issue for removal of indictment for obstruction of footpath, with consent of opposite side.

— 26.—*Mayer v. Thornton*—Rule nisi for commission to examine witnesses *videlicet* in San Francisco.

— 26.—*Regina v. Dwancliff*—Rule discharged for *quo warranto* against Mayor of Derby.

— 26.—*Regina v. Clerk of the Surrey County Court, Southwark*—Cur. ad. vult.

— 26.—*Montgomery v. Ross*—Rule discharged on objection as to sufficiency of affidavit.

— 27.—*Gage v. Newmarket Railway Company*—Cur. ad. vult.

— 27.—*Mardell v. Thellusson*—Rule nisi for new trial.

Queen's Bench Practice Court.

April 21.—*Regina v. Mayor, &c., of Hartlepool*—Rule nisi for mandamus on defendants to proceed to election of auditors and assessors.

— 21.—*Glynn and others v. Wilson and others*—Rule nisi for discharge of rule to examine witnesses abroad.

— 21.—*Earl v. Dowling*—Cur. ad. vult.

— 21.—*Regina v. Robinson*—Rule nisi for *quo warranto* on alderman of Newcastle.

— 21.—*Regina v. Recorder of Leeds*—Rule nisi for mandamus on defendant to enter continuances and hear bastardy order.

— 22.—*Mayer v. Thornton*—Application refused for order for commission to examine witnesses at San Francisco.

— 27.—*Regina v. Justices of Surrey*—Rule nisi for mandamus on defendants to direct payment of costs of indictment for non-repair of road out of highway rates.

Common Pleas.

Earl of Poulett v. Lee. April 20, 1852.

DEMISE FOR THREE YEARS OF FURNITURE.

— RIGHT OF EXECUTION CREDITOR TO SEIZE.

Household furniture was demised to the plaintiff for three years, at a certain rent by M., with the option of continuing the term for two years longer: Held, that an execution creditor of M. was not entitled to seize and dispose of the furniture, and a rule was refused to set aside the verdict for the plaintiff and for a new trial, in an ac-

tion brought against such execution creditor for making such seizure.

THE Earl of Maxborough demised to the plaintiff household furniture for a period of three years, at a certain rent, with the option of continuing the term for two years longer. The defendant having seized the furniture under a *bond fide* execution against the Earl of Maxborough, the plaintiff brought this action, and obtained a verdict at the sittings after Hilary Term last, in London, before Lord Chief Justice *Jervis*.

Petersdorff now moved to set aside the verdict and for a new trial.

The Court refused the rule, and said, that it was clear the legal right to the temporary possession and enjoyment of the property was in the plaintiff, as against the defendant's execution.

April 21.—*Addison v. Mayor, &c., of Preston*

—On special case, judgment for defendants.

—21.—*Robinson v. Gall*—*Cur. ad. vult.*

—21.—*Willis v. Lord Canterbury*—Arrangement to take this case as a common jury cause, unless special jury summoned by second sittings in Term.

—21, 22.—*Glanstones and another v. Allen and another*—On special case, judgment for defendants.

—22.—*Hayes v. Keane*—On special case, judgment for defendant.

—23.—*Jupe v. Great Western Railway Company*—Rule absolute for new trial.

—23.—*Heald v. Carey*—*Cur. ad. vult.*

—24.—*Beavon v. Walker*—Rule nisi for discharge of defendant out of custody.

—24.—*Randall v. Moore*—Rule refused to enter verdict for defendant, or to reduce damages.

—26.—*Crouch v. London and North Western Railway Company*—Rule absolute for new trial on payment of costs.

—22, 27.—*Novello v. Sudlow*—*Cur. ad. vult.*

—27.—*Ricketts v. East and West India Docks and Birmingham Junction Railway Company*—On demurrer to declaration, judgment for defendants.

Court of Exchequer.

Mellersh v. Rippen. April 21, 1852.

BILL OF EXCHANGE.—NOTICE OF DISHONOUR.—SUFFICIENCY OF.

Upon the non-payment of a bill of exchange drawn by the defendant and accepted by H., the plaintiff sent a letter to the defendant stating,—"your acceptance for 64*l.* due to day drawn by Mr. J. Hunt, is not paid:" Held, refusing to set aside a verdict for the plaintiff, and to enter it for the defendant, in an action brought on the bill, and to which there was a plea of no notice of dishonour, that, inasmuch as it was not shown there was any other bill answering the description in the notice by

which the defendant could have been misled, the notice of dishonour was sufficient.

THIS was a motion for a rule nisi to set aside the verdict for the plaintiff and to enter it for the defendant in this action which was brought on a bill of exchange drawn by the defendant and accepted by a Mr. Hunt, and to which the defendant pleaded that he had received no notice of dishonour. It appeared on the trial before Mr. Baron *Martin* at the sittings after last Term in London, that the plaintiff had sent a letter to the defendant stating,—"your acceptance for 64*l.* due to day, drawn by Mr. J. Hunt is not paid."

Lost in support, on the ground this description was insufficient.

The Court said, the rule must be refused, as it was not shown there was any other bill answering the description given in the notice, and that the defendant could have been misled as to the bill in reference to which notice of dishonour was intended to be given.

April 21.—*Pascoe v. Hill*—Rule refused for new trial on the ground of verdict being against evidence.

—21.—*Mellersh v. Rippen*—Rule refused for new trial.

—22.—*Carr v. Lancashire and Yorkshire Railway Company*—Rule nisi to arrest judgment.

—22.—*Bell v. Hornby*—Rule absolute to reduce damages.

—22.—*Kempton v. City of Dublin Steam Packet Company*—Rule refused for new trial.

—23.—*In re Jones*—Rule absolute for *habeas corpus*.

—24.—*Butler v. Aldon*—Rule nisi to enter verdict for plaintiff on leave reserved.

—26.—*Williams v. Roberts*—Judgment for defendant on demurrer to plea.

—27.—*Garvey v. Harris*—Rule refused to rescind certificate for allowance of plaintiff's costs.

—27.—*De Rothschild v. Royal Mail Steam Packet Company*—Part heard.

Court of Exchequer Chamber.

Regina v. Cooke and another. April 24.

CONVICTION FOR PERJURY, ON HEARING OF SECOND APPLICATION FOR BASTARDY ORDER.

A conviction was affirmed for perjury committed upon the hearing of a second application for an order in bastardy, although the former application had been heard by the magistrates, and been dismissed upon the merits, and held, that the magistrates had jurisdiction to entertain the second application.

IN this case, which was tried before the L. C. J. *Jervis*, at the last Leicestershire Assizes, the defendants had been indicted and found guilty of perjury. It appeared that the offence had been committed on the hearing of a second application for an order in bastardy.

the magistrates having dismissed the former application on the merits.

O'Brien, for the defendants, on the ground that as the magistrates had no jurisdiction after the dismissal of the former application upon the merits, to entertain the second application, the conviction could not be supported.

Hayer, contra.

The Court affirmed the conviction, and held that the magistrates had jurisdiction.

April 24.—*Regina v. Nash*—Stand over.

April 24.—*Regina v. Baldry*—Conviction affirmed.

— 24.—*Regina v. Moore*—*Cur. ad. vult.*

— 24.—*Regina v. Greenwood*—Conviction affirmed.

— 24.—*Regina v. Smith*—Conviction quashed.

— 24.—*Regina v. Squires*—Stand over.

— 24.—*Regina v. Perkins and another*—Reference to, *ck.*

— 24.—*Regina v. Vincent and another*—Judgment affirmed.

ANALYTICAL DIGEST OF CASES,

REPORTED IN ALL THE COURTS.

Privy Council.

A P P E A L S.

ABATEMENT.

Revisor.—*Technical rules in pleading*.—Some of the plaintiffs to a suit had died in the course of the appeal, and the suit had not been revived against their representatives. In such circumstances, the appeal was allowed to be prosecuted in the name of the surviving plaintiffs, as this Court is not disposed to give effect to technical rules in pleading, which would prevent justice being done. *Marchioness of Bute v. Mason*, 7 Moore 2.

See *Pleading*.

ATTORNEY AND PROCTOR.

Striking off the Rolls for contempt.—*Insufficient grounds*.—Two orders made by the Judges at Sierra Leone, striking a practitioner of the Courts off the Rolls, for alleged misrepresentation, contempt, and misconduct: *Held*, on appeal by the Judicial Committee, to have been improperly made, and ordered to be discharged, and the appellant restored to the Rolls. But, under the circumstances of the case, the Judicial Committee directed the appellant to apply to the Court in the colony for such re-admission. *Smith v. Justices of Sierra Leone*, 7 Moore, 174.

BREACH OF CONTRACT.

When time runs from.—In assumpsit, the breach of a contract is the cause of action, and the Statute of Limitations runs from the time of the breach, and not from the time of the refusal to perform the contract. *East India Company v. Oditchurn Paul*, 7 Moore, 85.

CALCUTTA CHARTER.

1. *Appeal from Supreme Court*.—Appeal from an order of the Supreme Court of Calcutta, suspending from office the Master and Accountant-General and Examiner in Equity of that Court, upon special application, allowed. *In re Grant*, 7 Moore, 141.

2. *Power to remove officer for misconduct*.—The Supreme Court at Calcutta has power by the Charter of Justice of 1774, (14 Geo. 3.), to remove or suspend officers of that Court on account of misconduct, and this power of re-

moval is not limited to acts done by each officer in his judicial character, but includes transactions distinct from those of his office.

An officer of the Court, being a shareholder and director of the Union Bank at Calcutta, was a party to deceptive statements, contained in the half-yearly reports of the concern, as to the state of the affairs of the bank, and also availed himself, in his character of director, to obtain credit to a considerable amount upon his personal security only, which, by the condition of the deed of co-partnership of the bank, amounted to a breach of trust. No charge or imputation, with respect to his judicial functions, was brought against him.

Held, (affirming an order of the Supreme Court suspending such officer from office,) that there were sufficient grounds for calling upon the Court to protect the administration of justice, by suspending such officer for so misconducting himself. *In re Grant*, 7 Moore, 141.

See *Reversal of Judgment*.

COLLISION.

See *Pilot Act*.

COMPROMISE.

Petition to withdraw appeal and carry into effect the terms of deed.—Petition to dismiss an appeal from the Sudder Court in India, and for an order directing that Court to carry into execution the terms of a deed of compromise, upon which the withdrawal of the appeal was founded, refused.

All this Court will do, in such circumstances, is to make an order of dismissal, reserving to the parties leave to apply to the Court in India to take further proceedings in pursuance of such agreement. *Raja Sutti Churn Ghosal v. Sri Mudden Kishore Indoo*, 7 Moore, 140.

CONTRACT.

See *Breach of Contract*.

EVIDENCE.

Answer to bill of discovery.—*New trial*.—*Materiality of proof rejected*.—At the trial certain documents contained in the schedule to the answer of the defendants to a bill of discovery filed in Equity, were read as evidence for the plaintiff, but the Court refused to allow the

defendants to read the answer to which the schedule was annexed: *Held*, that as the Supreme Court at Calcutta, being jurymen as well as judges, had refused to allow the answer to be read, on the ground that such answer contained nothing material to the issue, which could influence their verdict, a new trial on the ground of such refusal, would not be granted. *East India Company v. Oditchurn Paul*, 7 Moore, 86.

HABEAS CORPUS.

1. *Issuable by Court of Chancery in Vacation.*—The Court of Chancery in England has, by its Common Law Jurisdiction, authority as general as the Common Law Courts have, to issue a writ of *habeas corpus*, and can issue such a writ in the vacation. *In re Belson*, 7 Moore, 114.

2. *Properly sealed by Clerk of Records and Writs.*—The writ of *habeas corpus* (since the passing of the Statute 5 & 6 Vict. c. 103, and the 4th Order in Chancery of 1842, made in pursuance thereof), is properly sealed in the Office of the Clerks of Records and Writs. An objection to a writ so sealed, that it ought to be sealed with the Great Seal of England, overruled. *In re Belson*, 7 Moore, 114.

3. *Runs into Jersey.*—Registration of warrant for contempt in the Royal Court.—A writ of *habeas corpus ad subjiciendum*, issued under the fiat of the Lord Chancellor, pursuant to an order of the Vice-Chancellor of England, made in a cause in Chancery in England, to bring up the bodies of infant wards of Court, is a common law prerogative writ, which runs into the Island of Jersey, and the Royal Court of that island is bound to register a warrant of attachment for a contempt of such writ, and to aid its execution, within the island. *In re Belson*, 7 Moore, 114.

Case cited: *Ex parte Crowley*, 2 Swanst. 48.

JERSEY, ROYAL COURT OF.

Provisional order.—Appeal allowed (without prejudice to any objection to be taken by the Royal Court of Jersey at the hearing) from a provisional order of the Court, directing the infant children of the parties, to be left provisionally in the custody of the mother, pending a suit for a separation. *Belson v. Belson*, 7 Moore, 30.

See *Habeas Corpus*, 3.

JUDGE'S PRECEDENCE.

Removal to another Court.—Where a Judge of a District Court in Canada, was removed from that Court to another District Court, and the letters patent appointing him Judge to the latter Court, also granted him precedence over the Judges of that Court, whose commissions were of later date than his own: *Held*, that such grant of precedence was valid, and that the Judge had a right to rank and take precedence accordingly. *In re Bedard*, 7 Moore, 23.

LIMITATIONS, STATUTE OF.

1. 21 Jac. 1, c. 16, extends to India.—*Stat. 9 Geo. 4, c. 14.*—The Statute of Limitations, 21 Jac. 1, c. 16, extends to India.

The statute 9 Geo. 4, c. 14, (extended to India by the Indian Act, No. XIV., of 1840,) held to apply to an action pending in the Supreme Court at the time of its introduction into India. *East India Company v. Oditchurn Paul*, 7 Moore, 85.

2. *Merits of disputed claim.*—*Statute of Limitations waived.*—*Semble*, there may be an agreement, that in consideration of an inquiry into the merits of a disputed claim, no advantage should be taken of the Statute of Limitations, in respect of the time employed in the inquiry, and an action might be brought for a breach of such agreement. *East India Company v. Oditchurn Paul*, 7 Moore, 86.

3. *Return of purchase-money.*—*Salt.*—*Destruction by inundation.*—*Time for removing.*—In 1822, A. purchased at a Government sale at Calcutta, a quantity of salt, part of a larger portion then lying in the warehouse of the vendors (the Government) where the salt was to be delivered. By the conditions of sale, it was declared, that on payment of the purchase-money the purchaser should be furnished with permits to enable him to take possession of the salt; there was also a stipulation that the salt purchased should be cleared from the place of delivery within 12 months from the day of sale, otherwise the purchaser was to pay warehouse rent for the quantity then afterwards to be delivered. The purchaser paid the purchase money, and received permits for the delivery of the salt, which was delivered to him in various quantities, down to the year 1831; in which year, an inundation took place, which destroyed the salt in the warehouse, and there remained no salt to satisfy the contract. The purchasers petitioned the vendors for a return of the purchase-money, which was refused, on the ground that the loss happened through his negligence in not sooner clearing the salt from the warehouse. An inquiry, however, took place at the instance of the Government, who referred the matter to the Salt Collector for a report. This inquiry was made by the Government without the purchaser being a party to it. The collector did not make his report till the year 1838, and upon that report the Government refused to return the purchase-money, claimed in respect of the deficient salt. The purchaser then brought an action of assumpsit for the recovery of the purchase-money of such part of the salt as had not been delivered, alleging as a breach, the non-delivery thereof. To this the defendants pleaded the Statute of Limitations, that the cause of action had not accrued within six years before the commencement of the suit. The Supreme Court of Calcutta found a verdict for the plaintiff: *Held*, upon appeal, reversing such verdict, that when the purchaser applied for the residue of the salt, and was told that there was none to deliver, the contract was broken, and the cause of action accrued from the time of such breach; and that the subsequent inquiries by the Government did not suspend the operation of the Statute of Limitations, till the year 1838, the time of the final refusal, and that the remedy was barred by the statute.

East India Company v. Oditchurn Paul, 7 Moore, 85.

NEGOTIABLE INSTRUMENT.

Effect of.—Negligence.—The rule laid down in the cases of *Gill v. Cubitt*, 3 B. & C. 466, and *Down v. Halling*, 4 B. & C. 330, that the negligence of a party making a negotiable instrument, fixes him with the defective title of the party passing it, observed upon, and those cases declared to be no longer law. *Bank of Bengal v. Macleod*, 7 Moore, 35; *Same v. Fagan*, lb. 61.

NEW ZEALAND, GOVERNOR OF.

Powers of.—Prerogative of the Crown.—Grants of waste land.—Sci. fa. to set aside grant.—*Quare*, whether the governor of the colony of New Zealand, has, under his general authority, as such governor, vested in him, so much of the prerogative of the Crown, as relates to the making of grants of waste land within the colony?

A grant of land made by the governor to a land claimant, founded upon the recommendation contained in the report of a Commissioner, such grant embracing a quantity of land exceeding the amount prescribed by ordinance, Sess. 1, No. 2, of 1841: *Held*, in *sci. fa.*, void, and judgment given for the Crown. *Regina v. Clarke*, 7 Moore, 77.

NEW SOUTH WALES CHARTER.

Leave to appeal.—Upon petition, leave granted to appeal from an order of the Supreme Court at New South Wales, although no provision to the Queen in Council was made by the Charter of Justice, or Act of Parliament creating that Court. *Marchioness of Bute v. Mason*, 7 Moore, 3.

PATENT.

1. **Extension of term.—Attorney-General.**—In cases for extension of the term of letters patent, the Attorney-General represents the Government and the public generally. *In re Smith's Patent*, 7 Moore, 133.

2. **Caveat by Lords of Admiralty.**—An application by the Lords of the Admiralty to enter a caveat and be heard against a petition for the extension of a patent, such a caveat not having been filed within the time required by the rules of the Privy Council Office, refused, as the Attorney-General was present to watch the interests of the Government. *In re Smith's Patent*, 7 Moore, 133.

3. **Extension for five years.—Condition.**—Extension of letters patent granted for five years: the invention being of great merit and public utility, but the patentee and his grantees had received no remuneration, in consequence of the originality of the patent being disputed at law.

In granting such prolongation, the Judicial Committee imposed a condition, that the Commissioners for executing the office of High Admiral should have the right of manufacturing such invention, for the service of her Ma-

esty, without any licence from the patentee. *In re Smith's Patent*, 7 Moore, 133.

PILOT ACT.

1. **Collision.—Joint negligence of master and pilot.—Liability of owner for damages.**—The 6 Geo. 4, c. 125, only relieves owners of vessels from liability for damages done by their ship, where the damage is occasioned by the fault, negligence, or misconduct of the pilot alone.

A ship, having a licensed pilot on board, whilst at anchor in the Downs, the weather being bad, was run into by another vessel, and made to start from her anchorage, and was driven into a vessel at anchor.

Held, that she was to blame and liable to damages, because—

1st, The ship, notwithstanding the bad weather and a large number of vessels lying windbound in the Downs, had neglected to send down her topgallant and main-royal yards, and also her short fore and mizen topgallant masts; and

2ndly, That she did not set her stay-sail and jib, and so drag her anchor off shore.

In such circumstances, *held*, (affirming the decree of the Admiralty Court,) that the neglect to set the stay-sail and jib after she was driven from her anchorage, was the fault of the pilot alone; but that the neglect in not sending down the topgallant masts, &c., the cause of damage, was the joint fault of the pilot and master, and that the owners were not exonerated by the Pilot Act, 6 Geo. 4, c. 125, s. 55.

When the vessel came to anchor in the Downs, the duty of the pilot ended, but as he did not quit the ship, she continued under his charge. *Hammond v. Rogers*, 7 Moore, 160.

Case cited: *The Diana*, 1 Rob. jun., 181; 4 Moore, P. C. 11.

2. **Duties of master of vessel.—Licensed pilot.**—The duties of the master and crew of a vessel, with a licensed pilot on board, defined and pointed out. *Hammond v. Rogers*, 7 Moore, 160.

Case cited: *The Gipsy King*, 2 W. Rob. 537.

3. **Onus probendi.—Collision.—Pilot Act.**—The *onus probendi* lies on the owner of a ship, claiming exemption from liability for damages, under the Pilot Act, 6 Geo. 4, c. 125, s. 55, by reason of having a licensed pilot on board, to prove that the damage was occasioned by the fault of the pilot. *Hammond v. Rogers*, 7 Moore, 160.

Case cited in the judgment: *The Protector*, 1 Rob. jun. 45.

PLEADING.

Multifariousness.—Misjoinder.—Objection not taken in Court below.—Parties having separate and distinct interests were joined together as co-plaintiffs: *Held*, that as no objection for misjoinder, or multifariousness, had been raised by the answer, or at the hearing in the Court below, to the frame of the bill, it could not be taken upon appeal. *Marchioness of Bute v. Mason*, 7 Moore, 2.

See *Abatement*.

PREROGATIVE GRANT.

See *New Zealand Governor*.

PRINCIPAL AND AGENT.

1. *Joint property*.—*Deed of assignment to creditors by agents of trust property*.—*Account*.

—*Equitable relief*.—*A.*, on behalf of himself and certain other persons, resident in Scotland, his constituents, by deed engaged *B.* and *C.* to act as agents and managers in New South Wales, empowering them to purchase sheep, cattle, and land on behalf of *A.* and his constituents, for which purpose certain sums were remitted to the colony, to be invested for them and placed to their individual interest, and the proceeds of the stock, &c., were to be remitted to their respective credits. *B.* and *C.* were to receive for their trouble and expense one-third of the proceeds of the stock. With the money remitted *B.* and *C.* bought stock and lands, and conducted the establishment in the colony in their own name. *B.* and *C.* afterwards became embarrassed, and contracted liabilities in the management of the property, and drew bills on *A.* on account of the establishment, which bills were indorsed by *D.* and other parties in the colonies: these bills being dishonoured, and *B.* and *C.* being pressed by the indorsees, executed a deed of assignment, and conveyed the whole of the trust property, and some property of their own, to *D.* for himself and the other indorsees. *D.* had notice of the deed appointing *B.* and *C.* agents and managers, and that there was no authority on the part of *B.* and *C.* to draw bills on behalf of their constituents, which could personally bind them. Upon a bill filed by *A.* and his constituents against *B.*, *C.*, and *D.*, to set aside the deed of assignment, as fraudulent and void, for an account, the Supreme Court at Sydney held, that the plaintiffs were not entitled in equity to relief, and that their remedy was to sue *D.* at law: *Held*, by the Judicial Committee of the Privy Council, reversing such decree:—

1st. That the decree was erroneous, in declaring that the relief sought by the bill was not of a proper equitable character; and

2ndly. That under the circumstances *B.* and *C.* had, as such agents and managers, authority to dispose of the property intrusted to them, in discharge of the debts incurred by them on behalf of *A.*, and his constituents, in the management of the property, and that the deed of assignment was valid as against *A.* and his constituents, to the extent of subjecting such joint property to the payment of the debts and liabilities contracted, but null and void as to the residue, and an account directed to be taken in the Court below, of such debts and liabilities. *Marchioness of Bute v. Mason*, 7 Moore, 1.

2. *Pledging*.—*East India Company's Notes*.—*Indorsement*.—The payee of promissory notes of the East India Company by a power of attorney, authorized his agents at Calcutta, to "sell, indorse, and assign" the notes. These notes were transferable by indorsement, payable to

bearer. The agents, in their character of private bankers, borrowed money of the Bank of Bengal, offering as security, these promissory notes. The Bank made the advance, and the agents indorsed the notes, such indorsement purporting to be as attorney for their principal, and deposited them with the Bank, by way of collateral security for their personal liability, at the same time authorising the Bank in default of payment, to sell the notes in reimbursement of the advances. The agents afterwards became insolvent, and default having been made in payment, the Bank sold the notes, and realised the amount of their loan.

Held, that the indorsement of the notes by the agents of the payee to the Bank was within the scope of the authority given to them by the power of attorney, and that the payee could not recover in detinue against the Bank. *Bank of Bengal v. Macleod*, 7 Moore, 35; *Same v. Fagan*, *Id.* 61.

PROCTOR.

See *Attorney*.

REVERSAL OF JUDGMENT.

Verdict for Appellant.—*Supreme Court at Calcutta*.—Upon the reversal of a judgment of the Supreme Court at Calcutta, finding for the plaintiff, this Court, in the circumstances of the constitution of the Supreme Court, directed a verdict to be entered for the defendants, instead of awarding a *venire de novo*. *Bank of Bengal v. Macleod*, 7 Moore, 35; *Same v. Fagan*, *Id.* 61.

REVIVOR.

See *Abatement*.

SIERRA LEONE APPEAL.

Notice to the Judges.—Appeal allowed from orders made by the judges at Sierra Leone, striking a practitioner of the Courts in that colony, off the rolls of Proctors of the Vice-Admiralty Court, and also off the rolls as attorney of the Court at Freetown, upon terms, that the petitioner gave notice of the allowance of such appeal to the judges, with liberty to the petitioner to set down his case to be heard *ex parte*, at the expiration of six months after notice served. *Smith v. Justices of Sierra Leone*, 7 Moore, 174.

TECHNICAL OBJECTION.

Not taken in Court below.—This Court will not entertain a purely technical objection to a party's right of action, which has not been made in the Court below. *Bank of Bengal v. Macleod*, 35; *Same v. Fagan*, *Id.* 61.

TRUSTEE, INSOLVENT.

Appeal by.—A party having an interest in the subject matter in his own right, and also as trustee for other parties, became insolvent, and his interest was vested in a trustee appointed to his sequestered estate. *Held*, that he might, as such trustee, prosecute an appeal from an order made in the suit, notwithstanding the insolvency and the vesting of his estate and interest in the trustee of the sequestered estate. *Marchioness of Bute v. Mason*, 7 Moore, 2.

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EDUCATION FOR THE BAR.

~~~~~ SCHEME OF THE BENCHERS.

It would appear from an announcement made by the Attorney-General in the House of Commons, in answer to a question put by Mr. Ewart, that the Benchers of the Four Inns of Court, now exercising the power of calling students to the Bar, have adopted, in all its leading features, the report of the Joint Committee of Benchers on the subject of legal education, to which the attention of our readers was directed in a former Number (vol. 43, p. 305).

Professorships or lectureships are to be established and classes formed for the purpose of instruction; public examinations are to be held at regulated intervals, and before a student is admitted to the Bar he must have obtained a certificate, testifying that he had either attended the lectures or satisfactorily passed through a public examination, and in order to encourage students to submit to a public examination, *honours* are to be conferred on the most distinguished. A standing Committee of eight, two to be nominated by each Inn of Court, is to be appointed for the purpose of superintending the system thus about to be established.

That the meagre and defective outline of a scheme of legal education which has at length obtained the approval of the Benchers of the Inns of Court, is an *improvement* upon the existing anomaly, under which persons are admitted to the ranks of a learned Profession, without being subjected to any mental test or without any guarantee that they have ever had the advantage of a regular system of instruction, is readily conceded; but the proposed measure is so objectionable that there is great reason to fear it will not be received with complacency by the Profession, even as a commencement

of educational reform, and that its only effect will be, to delay that which is urgently required, the establishment of a Legal University.

If it be true, as has often been stated, that the revenue of the four Inns of Court exceeds 50,000*l.* per annum, we can see nothing very liberal in their proposing to devote less than one-thirtieth part of their income to the establishment of three or four lectureships; unless indeed we could concur with the champion of the Benchers, whose letter appears in the recent Number of the *Law Review*, under the title of "A Templar,"¹ and who boldly asserts that the Inns of Court are "purely voluntary bodies—voluntary in their inception and voluntary in their continuance," and subject to no trust for legal education. If indeed, as suggested by our satirical friend, the Inns of Court are so many "dining clubs," subject to no trust whatever, and that "the Benchers have not hesitated, where it was necessary, to send a special commissioner abroad to secure on the spot the first growth of a favourite vintage," and that some amongst them constantly indulge in Steinberg at 11*l.* 10*s.* per dozen, the wonder is, not that they can only afford to devote 1,500*l.* per annum to legal education, but how they can afford to devote anything?

The alternative which the scheme adopted by the Benchers offers, of attendance at lectures, or submitting to a public examination, neutralises all the benefits that might be expected to arise from the measure. That the strictures we ventured to publish on this part of the plan, when it was first propounded by the Committee of Benchers, were not uncalled for, and that our objections are shared by a large proportion of the Bar, is tolerably obvious from the

¹ Vol. 16, p. 179, Defence of the Benchers.

Report of the Law Amendment Society on this subject.

After observing that the number of readerships about to be instituted is quite inadequate, that a plan of professional instruction which includes no provision for teaching the Law of Evidence, Commercial Law, the Law of Nations, or Medical Jurisprudence, is manifestly defective, and that to unite in one the functions of a professor and class tutor, would render the instruction in both departments inferior, the report thus refers to the proposed rules as to examination :

“With regard to the rules proposed as to examination, your Committee cannot but speak in terms of strong *condemnation*. They know of no other instance in which an entirely voluntary test has been imposed on the candidate for admission to a Profession, and they are convinced that the establishment of such a system must lead to the most serious evils. In the first place it would leave the entrance to the Bar open to any person, however ignorant, who may have chosen to comply with the rules as to dinners and attendance (which might be merely nominal) at the readers' lectures. The existing abuses would thus be aggravated rather than otherwise, since a student might attain the rank of barrister with as little qualification for its duties as at present, while he might be able to boast of the lectures which he had attended and the course he had gone through, with the concealment of the single fact, that he had neglected to imbibe the smallest portion of knowledge during the process. In the second place, such an examination would inevitably be considered in the light of an advertisement for those who might be desirous of such a recommendation, and would therefore be avoided by those who had already established, either in the Classical Universities or elsewhere, a distinguished reputation, or in other words, by nearly all the men who would be likely to add brilliancy to its classes, and it accordingly would rapidly sink into inferior estimation and be sought only by second-rate men. In short, your Committee believe that a mere voluntary examination would tend rather to increase existing evils, and would be worse, on the whole, than no examination at all. With regard to the scholarships proposed to be founded, your Committee would briefly observe, that they are intended to be bestowed on the student at precisely that point in his career where they are least needed,—viz., at its termination. Such exhibitions might be most useful if applied to maintain a spirit of competition among the students during the earlier periods of their course, when a stimulus is often needed to keep up flagging exertion, and when the inability to obtain a professional income would make any stipend of great value to those who, though perhaps destined to reach the highest pinnacle of eminence, may be now struggling

with poverty. For the aid of such the foundation of these scholarships would afford not the slightest provision. In concluding their notice of the deficiencies in the Benchers' scheme, your Committee would remark, that they see in it no plan for the revival of collegiate education in our Inns, no symptom of improvement in the administration of their large revenues, no attempt to employ the members of the Junior Bar in the instruction of classes, and no provision for exercising the slightest moral supervision over the students of the respective societies. For these reasons, as well as for the defects above pointed out, your Committee feel themselves bound to reiterate their decided protest against the acceptance of such a scheme as one satisfactory to the Bar or to the public; and to record their conviction that its adoption would bring discredit alike on the body from which it emanates and on the Profession which would consent to accept it as a final settlement.”

In harmony with the views contained in this Report, the Law Amendment Society (on the 26th April last) came to two resolutions, which are as follow :—

“That it would be highly advantageous to the Profession and the public that a portion of the revenues of the Inns of Court should be devoted to the establishment of a sufficient scheme of legal education.

“That no person should be called to the Bar and be allowed to practise as a barrister who has not passed a proper examination as to his legal qualifications for that degree.”

Thus the matter at present rests, and will probably continue to do, until the subject is taken up in Parliament and discussed in an enlightened and comprehensive spirit. The Benchers must be authoritatively informed, that they will not longer be permitted to turn the venerable institutions, with the government of which they are intrusted, into mere “dining clubs;” and that the Legislature regards them as trustees administering large funds for public purposes, and invested with powers in the faithful and judicious exercise of which the public is deeply interested.

As already intimated, irrespective of its imperfections and errors in matters of detail, we look upon the plan proposed by the Benchers for dispensing the benefits of legal education as essentially illiberal and unjust. It excludes from any—the slightest—participation in those benefits, the most extensive branch of the Profession consisting of solicitors and attorneys, although the claims of this branch of the Profession to share in the advantages of a Legal University are quite as strong, and of a more ancient date, than any that could be esta-

lished on the part of the other branch of the Profession. It is not to be wondered at, therefore, that a scheme so deficient in the elements which entitle it to public support, should in this instance produce very general disappointment and dissatisfaction.

PROPOSED REMOVAL OF THE COURTS FROM WESTMINSTER.

WE have, from time to time, during the last twelve years, stated the objections to the Courts adjoining Westminster Hall. They are twofold :—1st. Inconvenience of Site. 2nd. Inconvenience of Construction and insufficiency of Number. Short as the Session may be, we think it should not be allowed to pass without briefly re-stating the grievance. Towards the close of our last volume, we laid before our readers the Petition of the Incorporated Law Society, renewing their frequently repeated appeal to Parliament,¹ and we shall now advert to some of the prominent topics in favour of the measure.

1. *Inconvenience of Site.*

The chambers of the Bar, of the great majority of London attorneys, and of the agents of the country attorneys, are situated in or near the Inns of Court. There also are the chambers of the Judges, Masters, Accountant-General, Registrars, and all the other Law and Equity offices. The Courts are a mile and a half distant from this centre of Law business,—the great mart of the Law,—the daily resort of professional men. During half the legal year a large proportion of the practitioners are carried, by the business of the Courts, into a quarter of the town with which (except the very few engaged in Parliamentary business) they have nothing to do,—traversing each time, and not unfrequently more than once a day, a distance of three miles!

They are detained there, often day after day, to the interruption of their own professional duties, and to the great inconvenience of others. It happens in hundreds of instances daily, that engagements before the Judges at Chambers and before the Masters and Registrars, and other appointments of an equally urgent nature, are rendered ineffectual through the absence of professional men, who, at the very moment, are waiting, unoccupied, at Westminster.

The aggregate of expense and loss arising in various ways from these hindrances in

the way of justice, and of the general business of the Law, would show, if it were capable of estimate, that the erection of new Courts in the Law district would be a measure of public economy, besides being calculated to lead to increased facilities and expedition in the practice of the Courts, which cannot be hoped for under existing circumstances.

2. *Inconvenience of construction and insufficiency of the Courts.*

The Equity Judges recently appointed, have no adequate Courts at Westminster, nor, according to the evidence, can space be found for them, without interfering with, and materially prejudicing, the designs for the New Houses of Parliament.

The Court of the Master of the Rolls is by no means fitted for the exercise of that Judge's important functions.

The internal arrangements of the Common Law Courts, more especially the Queen's Bench, do not afford to the suitors and their witnesses sufficient space; to the attorneys, convenient access to counsel; or to the public, that accommodation which it is beneficial to the administration of justice they should possess.

The Common Pleas has no suitable Court for the trial of causes during Term.

The Bail Court and Inner Court of Exchequer are also much too small for trials at *Nisi Prius*, and when crowded, these Courts are frequently unwholesome.

That the Courts are *deficient in all accessory accommodations*, appears to admit of no difference of opinion.

There are no sufficient consultation rooms. There is one small room which answers for this purpose, attached to the Queen's Bench, and one adjoining the Master of the Rolls' Court, but no other. Consultations, involving important interests, are frequently held in the passages and avenues of the Courts; in the robing room; in a neighbouring room, with three or four going on together,—often those of adverse parties in the same room.

The only places of waiting for jurymen, witnesses, and parties in attendance, are the Great Hall, and the passages of the Courts. The attorneys hire rooms for their witnesses at the neighbouring coffee houses; otherwise, in winter and summer, they have to walk about the Hall, without a seat and without refreshment.

There is no library, except a small one for the Equity Courts. A library, and a general meeting room, are much wanted. Neither are there any rooms, wherein the barristers can read their briefs and papers.

¹ See p. 447.

The attorneys have no room to which they can retire to prepare any document requisite at the moment, or to answer letters.

There are no refreshment rooms. Formerly there was a coffee house, which in some measure answered the purpose, but it was destroyed at the fire of the Houses of Parliament.

These deficiencies, so remarkable as to appear incredible, are the result of the limited site on which the Courts are erected.

Thus the deficiencies of the Courts of Westminster Hall, the want of more extended accommodation, and the impossibility of obtaining any additional space of ground, together with the inconveniences attending that site, have suggested the construction of New Courts in the neighbourhood of the Inns of Court,—the whole united under one roof, combining, in the same building, new offices for the Judges, the Registrars, and the other officers of the Court of Chancery, and the Masters and other officers of the Common Law Courts.

Our readers are aware that this important question was first brought forward by the Incorporated Law Society in 1840, when a Select Committee of the House of Commons was appointed, on the motion of Sir Thomas Wilde. The Committee was renewed in 1845 by the late Mr. Charles Buller, and for our present purpose we abridge the evidence of Sir Charles Barry,² which shows convincingly the inconvenience of the present Courts, and the necessity of new ones, more in number and more commodious, and the impossibility of reconstructing the present Courts at Westminster, so as to provide a sufficient extent of building. Sir Charles proves that there is no site in juxtaposition with Westminster Hall for the erection of New Courts; and he states the purposes for which the present site might be appropriated in connexion with the Houses of Parliament. The removal of the Courts would enable a material improvement to be effected in the New Palace, by a grand public entrance at the north-east corner of Palace Yard, which would be inclosed by a quadrangle.

He then describes the proposed site lying between the Strand on the south, Carey Street on the north, Chancery Lane on the east, and Clements Inn and New Inn on the west. The clearance of the lanes and alleys within that area he points out as of

vast advantage to the neighbourhood. He would occupy the centre of the square with the new Courts, widen the Strand and part of Fleet Street to one hundred feet; Carey Street to sixty feet; and grant building-leases for Chambers on the east and west sides of the Courts, the ground-rents of which would defray nearly one-half the price of the whole ground. Then the rest of the present offices of all the Courts, which would be brought under the roof of the new Courts, would be available to a large extent in further reduction of the purchase.

The architecture of the new buildings is proposed to be that of the Tudor style; and its principal front to be placed next the Strand and Fleet Street, presenting a noble edifice at the entrance to the city. The former design for Lincoln's Inn Fields was of Grecian architecture, the object being to keep the building at a moderate elevation. The proposed edifice will be much more lofty.

The site thus recommended, between the Temple and Lincoln's Inn, with a covered way over Temple Bar, is admirably adapted for the purpose. It is in the very midst of the Inns of Court,—in the centre of the Law district,—and that district is the centre of the whole metropolis. We beg to present our readers with a sketch of the locality, showing, by the black spaces marked thereon, the chambers and offices of barristers and attorneys, which will enable the reader to appreciate the peculiar fitness in all respects of the proposed site.

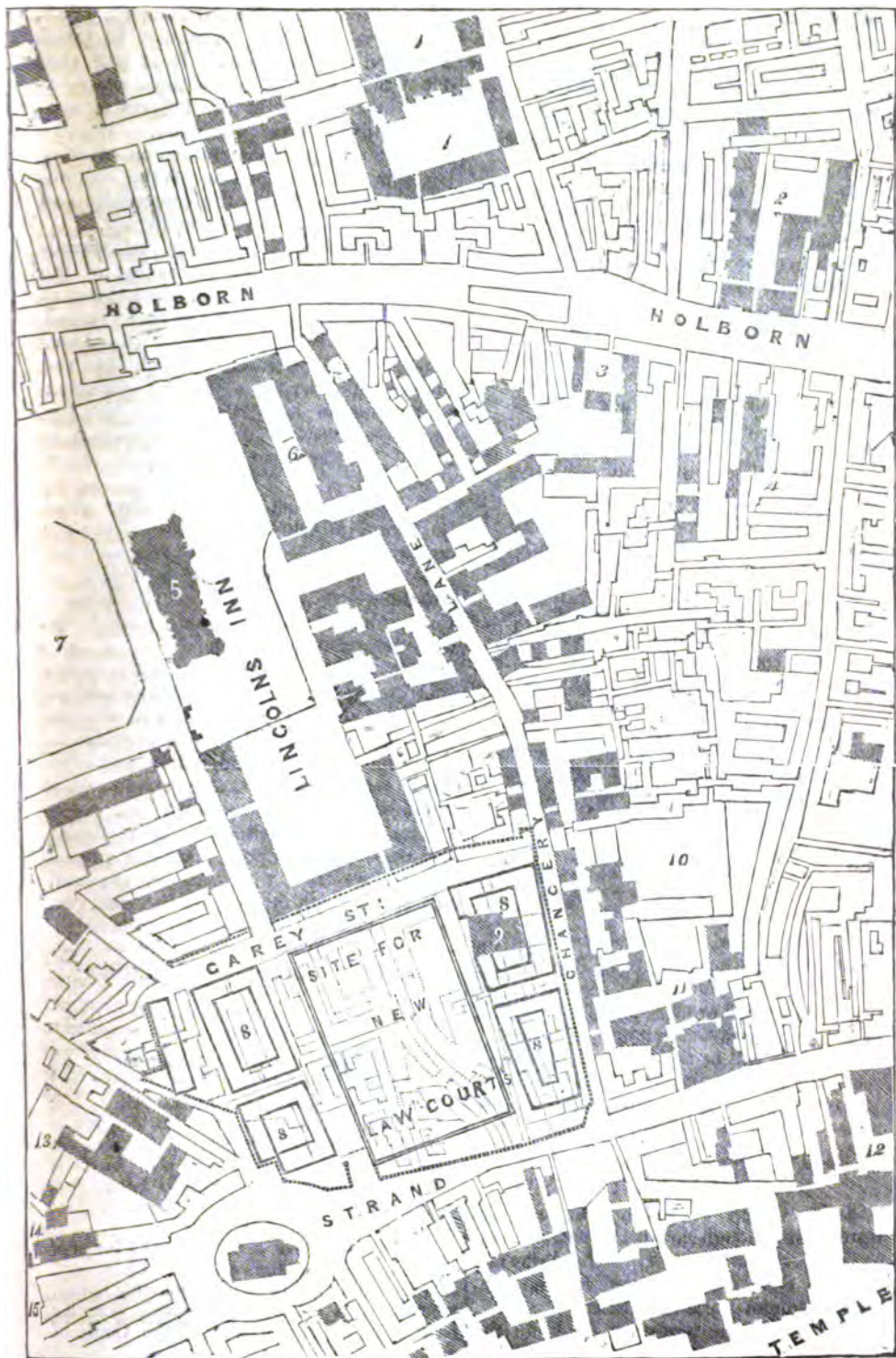
The dotted lines on the plan marked thus show the present state of the proposed site, and the double line thus = = = = = indicates the position of the proposed New Courts, and the New Chambers of Counsel and Solicitors.

Chancery Lane, Carey Street, Lincoln's Inn, Holborn, the Strand, and the Temple, are conspicuously named on the plan, but its size (diminished from that annexed to Sir Charles Barry's evidence) renders it necessary to refer by numbers to other streets and places in the law district. They are as follow :—

1. Gray's Inn.
2. Furnival's Inn.
3. Staple Inn.
4. Barnard's Inn.
5. Lincoln's Inn New Hall.
6. Stone Buildings.
7. Lincoln's Inn Fields.
8. 8. 8. New Chambers for Counsel and Solicitors on the east and west sides of the proposed Courts.

² Report of 1845, Par. Paper, No. 608.

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| 9. The Incorporated Law Society. | 12. Serjeant's Inn, Fleet Street. |
| 10. The Roll's House & Public Record Office. | 13. Clement's Inn and New Inn. |
| 11. Serjeant's Inn and Clifford's Inn. | 14. Lyon's Inn. |



The necessity of the removal of the present Courts, and their re-construction upon a larger and more commodious plan,—adapted to the wants of the public,—being abundantly manifest, the only question remaining is,—*how is a Fund to be provided for defraying the expense?* This question we proceed to consider and answer.

As to the Courts of Equity and their Offices:

Instead of two Courts, which were formerly deemed sufficient, there must now be six; and the number of Registrars and Clerks including those of the Accountant-General, being largely increased, they require proportionate accommodation for the despatch of their important functions. The suitors in Equity, therefore, must have more room than the Common Law, and may reasonably be expected to contribute a larger share of the expense of the new building. In the Bill for abolishing the Master's Offices, the Lord Chancellor is expressly empowered to cause a set of Chambers in Lincoln's Inn to be taken for each Judge for carrying on the Chamber business, *until Courts with proper rooms attached can be provided for them;* (s. 12.)

The following are the proposed "ways and means" for effecting this great object:

1. The accumulation of interest or dividends arising from stock purchased from the suitors' money *not directed to be invested* (and to which interest they have no legal claim) amounts to no less a sum than 1,241,188*l.* stock. Even the future interest of this accumulated surplus (without touching the capital) would raise a sum adequate for the purpose.

2. The sum of 201,028*l.* stock, the accumulated surplus of the *Fee Fund*, after paying all the charges upon it.

3. The offices now occupied by the Masters, Registrars, Clerks of Records and Writs, &c., hereafter to be located in the new building, will produce probably 50,000*l.*, or a rent equal to that amount of capital.

4. There will be the saving of the annual rent now paid for the Taxing Masters and Lunacy Offices, &c., which may be estimated as equal to 24,000*l.*

As to the Courts of Common Law and their Offices:

These Courts at Westminster are also insufficient, though not to the same extent as the Courts of Chancery. Nisi Prius and Practice Courts are required for the convenient administration of justice.

5. Towards the necessary funds for the

new building, the Consolidated Fund ought to re-fund a very large sum. The surplus fees paid into the Treasury to the Consolidated Fund since the 1st January, 1838, under the 1 Vict. c. 30, cannot be much less than half a million. It is true that out of these receipts the pensions and compensations allowed to the holders of abolished offices have been paid. But we maintain that pensions granted on effecting law reforms for the benefit of the community should be paid by the community and not by the suitors of the present day.

6. To the large sum thus in justice available, there will be added a saving of the rent of all the offices of the three Common Law Courts, now paid to the several "ancient and honourable" Societies of the Inner Temple for the Queen's Bench; to the Judges and Serjeants for the Common Pleas; and to Lincoln's Inn for the Exchequer of Pleas. These rents amount to 2,500*l.*, or thereabouts, and may be valued at 50,000*l.*

7. To these items may be further added the sum of 86,000*l.*, the value of the site on which the inconvenient Courts at Westminster now stand: making a total of 210,000*l.*, as the value of the present Courts and offices, applicable towards the expense of the new building.

This sum of 210,000*l.*, with a due contribution from the accumulated interest on the Suitsors' Fund, and the several Fee Funds, will amply provide for the proposed Courts and offices, and effect one of the most important improvements of the present day. If we must not expect any material progress to be made during the short period devoted to the present Session, we trust that early in the next, this measure will form one of the most prominent objects of Parliamentary attention.

SUITORS' RELIEF IN CHANCERY.

PETITION OF THE INCORPORATED LAW SOCIETY.

To the Honourable the Commons of the United Kingdom of Great Britain and Ireland, in Parliament assembled.

The humble Petition of "The Society of Attorneys, Solicitors, Proctors, and others, not being Barristers, practising in the Courts of Law and Equity of the United Kingdom," incorporated by Charters of King William the 4th and Queen Victoria.

SHWETH,—That a Bill "for the Relief of the Suitsors of the High Court of Chancery" is now pending before your Honourable House, wherein it is proposed to provide that the Salaries of all the Judges of the Court of

Chancery should be paid out of the Consolidated Fund of the United Kingdom, instead of out of the interest of the securities purchased with the cash of the suitors.

Your petitioners, while they desire to express their approbation of this part of the proposed measure, respectfully submit, that the just and beneficial relief to the suitors should be extended by making the salaries of many, if not all, the officers of the Court, and the expenses of the establishment for conducting the business of the Court, also payable out of the Consolidated Fund.

That by the Statute passed in the 5th year of the reign of King George the 4th, chapter 41, the Stamp Duties on Law Proceedings in the Courts of Great Britain and Ireland were repealed as Taxes upon the Administration of Justice.

That the Right Honourable Lord Langdale, the late Master of the Rolls, in his evidence before the Select Committee of your Honourable House on the Courts of Law and Equity, on the 14th May, 1841, declared his opinion against such taxes in the following terms:—"One of the first duties which the Government owes to the country is to provide for the due administration of Justice; and I think that all expenses ought to be defrayed by the Government in the discharge of that duty."

That, in addition to the fees paid by the suitors towards the salaries of the Judges, Masters, Registrars, Clerks, and other officers, litigating parties have now, and always must have, to pay large sums for the fees of their counsel and solicitors and for the loss of time and expenses of their witnesses.

That by the annual return to Parliament of the Accountant-General of the Court of Chancery it appears that the fees paid by the suitors to the officers of the Court for the last year amounted to 134,467*l.* 5*s.* 2*d.*, which was applied in payment of the salaries, compensations, and pensions of the officers of the Court; and that in addition thereto, the sum of 69,024*l.* 6*s.* 7*d.* was paid out of the Suitors' Fund for the salaries of Judges, Masters, and other officers, including 10,000*l.* for pensions and compensations to retired officers, making together 203,491*l.* 11*s.* 9*d.*, and that the salaries of the additional Judges recently appointed will considerably increase the amount.

That, according to the Accountant-General's account to the 1st October, 1851, the aggregate of the Suitors' Fund then amounted to 3,832,117*l.* 8*s.* 1*d.* stock, consisting—

First, of a sum of 2,590,928*l.* 18*s.* 6*d.*, purchased from time to time, under the authority of Parliament, with a portion of the suitors' cash not directed to be invested.

Second, of a sum of 1,241,188*l.* 9*s.* 7*d.*, purchased with the dividends of the above-mentioned stock, under the like authority, after deducting from such dividends the charges which have been imposed thereon under the authority of Parliament.

That the dividends received in the year ending 1st October, 1851, on the stock so pur-

chased amounted to 105,396*l.* 10*s.* 9*d.*, from which being deducted the payments amounting to 69,024*l.* 6*s.* 7*d.*, a surplus for that year remains of 36,372*l.* 4*s.* 2*d.*

That the pensions and compensations included in such payments out of the dividends of the Suitors' Fund are:—

Pensions to retired Masters,	£.	s.	d.
Clerks, &c.	4,983	6	8
Compensations to officers of late Equity Exchequer	5,023	15	2
Secretaries to Vice-Chancellors, Serjeant-at-Arms, Tipstaff, Ushers, and Court Keepers	2,627	14	1
Office expenses	5,071	9	8
	£17,706	5	7

That the Fee Fund originated under the Act 3 & 4 Wm. 4, c. 94, for the regulation of the proceedings and practice of the Court of Chancery, by which the fees therein mentioned were directed to be paid into the Bank of England to the credit of the Accountant-General in an account to be entitled "The Suitors' Fee Fund."

That the receipts of this Fee Fund for the last year ending 24th Nov., 1851, amounted to 133,842*l.* 0*s.* 8*d.*; and it appears that the charges thereon exceeded the receipts by 625*l.* 4*s.* 6*d.*

That in those charges are included the compensations to the holders of abolished offices, and to others whose salaries are reduced, viz.:—

Compensation to two Masters for diminution of income	£.	s.	d.
Ditto Registrars for ditto	1,450	0	0
Ditto to Clerk of Entries for diminution of income	4,000	0	0
Ditto Examiner and Clerk	100	0	0
Ditto Clerk of Petty Bag	400	0	0
Ditto Six Clerks, Sworn Clerks, &c.	500	0	0
Pension to Master of Reports	38,789	0	0
Office expenses	2,250	0	0
	2,378	10	2
	£49,867	10	2

That in order fully to provide for the salaries and compensations payable out of the Fee Fund, a larger annual sum has been raised (most unnecessarily and to the suitors most oppressively) than such salaries and compensations actually amount to, and in the course of several years the surplus fees have at length amounted to 201,028*l.* 2*s.* 3*d.*

That by the Accountant-General's annual account to 24th November, 1851, it appears that the payments in the Lunacy Department, including 1,598*l.* for compensations, amounted in that year to the sum of . . . £11,195 10 10 Whilst the receipts were only . . . 7,077 13 0

Leaving a deficiency of . . . £4,117 17 10

Your petitioners submit to your Honourable House, that to burden the present suitors with the charges attending the carrying into effect the alterations and reforms previously enacted is manifestly unjust, and that such burthen for

effecting a public benefit should be borne by the public at large.

Your petitioners, however, admit that in a considerable class of cases in the Courts of Equity, wherein the Court acts as a trustee of the property in question, and where the time of officers and clerks is principally occupied in the details incident to suits for the due administration of such property, it is but just and proper that a reasonable per centage or *ad valorem* charge should be paid by the parties beneficially interested therein for the care and management thereof.

That the stock standing in the name of the Accountant-General in the various suits now pending in the Court of Chancery amounts to 46,000,000*l.* or thereabouts, and the average of the annual payments into Court 7,000,000*l.*

That in order to raise a fund for the payment of the officers and clerks engaged in the business of those suits, a small per centage should be charged on moneys paid into Court.¹

Your petitioners therefore humbly pray that the suitors of the Court of Chancery may be relieved, not only from the payment of the salaries of the Judges, but from the compensations payable to the holders of abolished offices, and the pensions of retired officers; and from the salaries of the officers in attendance on the Courts; and from the office expenses; and from the salaries of the Masters and Registrars; and from the deficiency in the Lunacy Department; and that the remaining sum payable for the salaries of Clerks engaged in the business of the suitors may be raised by the per centage above mentioned.

And your petitioners will ever pray.

REPEAL OF CERTIFICATE DUTY.

It appears that the new Chancellor of the Exchequer considers it prudent to make no immediate change in the financial arrangements of his predecessor, and having resisted the remission, amongst the rest, of the "Taxes on Knowledge," as they are called, consisting of the duties on paper, newspaper stamps, and advertisements, it could perhaps be scarcely expected that the tax on Lawyers would form the only exception to the general rule.

He adverted not to the difference between the Certificate Tax and all other Imposts, in that the latter fall on the whole community, whilst the former is a burthen on one class only. The other taxes cannot be condemned, as being not only impolitic and unjust, but oppressively unequal. It seems to have been forgotten, also, that the House of Commons has already in the two preced-

ing Sessions again and again decided by large majorities in favour of the repeal, and therefore it could scarcely be necessary again to debate the question.

However, it will have been observed that Lord Robert Grosvenor lost no time in calling the attention of the House to the claims of the Profession, for on the night of the financial statement he expressed his regret that the Chancellor of the Exchequer had made no allusion to the Duty on Attorneys' Certificates, and gave notice of his intention to move for leave to bring in the Bill to Repeal the Tax on Tuesday, the 25th instant. The motion fortunately stands second on the list of business for the evening sitting, and may therefore be fully expected to come on at a favourable time.

We understand that the most strenuous exertions will be made to ensure the attendance of the members who are favourable to this just claim of the Profession. Already upwards of 160 petitions have been presented from various parts of the country, from Ireland and Scotland and the Metropolitan Societies. Several hundreds more may be expected in time for the motion; and seeing that justice is on the side of the claim, and that its amount, though large, (and indeed intolerable to many,) is but the five-hundredth part of the annual income, it surely ought to be given up; the more especially as the emoluments of the attorneys, by the reforms in the Law, have been to the majority of them ruinously reduced.

It is trusted that every practitioner, though he may not feel the pressure of the tax to the same degree as many of his brethren, will exert himself for the general relief of the whole body by urging the members of Parliament with whom he may be acquainted to render this act of common justice without further delay. If there be a good majority, on bringing in the bill, we cannot believe that the present Chancellor of the Exchequer will further oppose relief.

THE LAW REVIEW AND THE LEGAL OBSERVER.

THE *Law Review*, published on the 1st of the present month, opens with a somewhat discursive article, upon "Lord Derby's Policy as to Law Reform," in the course of which our able contemporary finds occasion to quarrel with a very unpretending paragraph which appeared in this publication some weeks since, announcing that the causes tried on

¹ Besides that sum of cash, the average amount of stock transferred into Court is also 7,000,000*l.* annually, and a poundage of 1*d.* per pound on 14,000,000*l.* would yield about 60,000*l.*

the Circuits, which had just then closed, were under the usual average, and observing that "the transition state had continued long enough to inflict injury upon the legal Profession and the public," and that "in the then present temper of Parliament, it was vain to expect that important measures of legal reform would obtain adequate attention or consideration." It "amuses" our contemporary, it seems, to find persons who ascribe the depression of the Profession to recent reforms in the law instead of the state of the law itself, and after admitting a fact neither alleged nor denied, "that the temper of Parliament is adverse to the Profession," the writer prophesies, that "this so far from being mitigated will become more fierce, and can only be changed by an alteration of the policy of the Profession with respect to Law Reform."

Now, it does not appear to us to involve any condemnation of recent reforms in the law, to assert that a transition state is injurious. We had thought this partook very much of the nature of a truism; but it requires a blind admiration for Law Reform to imagine that every change that has taken place within the last 10 years is an improvement, or to overlook the fact that many of those changes have produced unmitigated mischief.

Our contemporary seems to think that the Bar are fully alive to the necessity of adapting the legal institutions of the country to present times and uses, as evinced by the number of candidates for seats in Parliament starting from that branch of the Profession. We can venture to assure our enthusiastic contemporary, who hints some misgivings on this point, that the other branch of the Profession, although it does not furnish an equal number of candidates for seats in the Legislature, is at least as anxious as the Bar to afford disinterested support and assistance to every judicious and well-considered attempt to improve the law and its procedure. No real reform of the law has been or is likely to be resisted by that branch of the Profession, the manifest interest of which it is to have the laws cheaply, expeditiously, and satisfactorily administered.

NOTES ON EQUITY.

DISCOVERY.—PRIVILEGED COMMUNICATION.—SOLICITOR AND CLIENT.

On an appeal to Lord Chancellor Truro from the order of Vice-Chancellor Knight Bruce directing the production of certain

documents, the following questions arose:—
1st. Whether communications which would be privileged if they had taken place between solicitor and client, or between solicitor and client through an agent not a party to the suit or the partner of a party, are to be refused protection because they are made between and through parties to the suit. 2nd. Whether protection ought to be limited to confidential communications made in reference to litigation between the same parties to the suit, and ought not to be extended to litigation as to the same or similar matters between other parties.

The facts were briefly these:—

The defendants in a suit were shareholders in a company, and had been authorised by the other shareholders to wind up its affairs, and for this purpose, among other things, to send out agents to India. The plaintiffs in the suit having brought actions against the defendants as shareholders, in respect of certain debentures issued by the company, the defendants filed a bill, on behalf of themselves and the other shareholders, to restrain the actions, and to obtain relief in respect of the debentures. The plaintiffs then filed a bill against the defendants for discovery in aid of the actions. From the answers of the defendants to this bill, it appeared that they had in their actual possession, certain letters which had passed between the defendants and the directors and shareholders of the company and the agents in India, after the dispute had arisen and in contemplation of and pending proceedings in respect of the dispute, and for the purpose of assisting the defence of the defendants and the other shareholders.

On a motion by the plaintiffs for the production of these letters, the defendants submitted that they were not bound to produce them,—first, because they held them on behalf of themselves and also of the other shareholders of the company who were not parties to the suit; and, secondly, because the letters fell within the class of privileged communications.

The Court decided that the defendants sufficiently represented the whole body of shareholders for the purposes of litigation, and that so far as the parties by or to whom the letters were sent were shareholders of the company, the letters were not privileged, and ordered their production. It was also held, that although the letters related to the matters in dispute and arose out of communications between the shareholders themselves, with a view to their defence in the suit, that circumstance formed no ground of protection. And the Court declared that professional privilege, as a ground of exemption from the production of documents, is adopted simply from ne-

cessity, and ought to extend *no further than absolutely necessary to enable the client to obtain professional advice with safety.*

From the Lord Chancellor's judgment on this second point, relating to professional privilege, we extract the following:—

"With respect to the second ground of protection, namely, that of privilege, I will consider the documents with reference to the persons by and to whom they were written, and also in relation to their character and object. Some of the documents consist of communications between the defendants or some of the shareholders on the one hand, and the solicitors of the company on the other hand, after the dispute: these latter documents are clearly exempted from production, and such would be the case, even if they were made through the medium of an agent of the solicitors; this is established by *Reid v. Langlois*, 1 Mac. & G. 627, and by *Steele v. Stewart*, 1 Phil. 471. Other documents consist of letters by the defendants Elliott, Wilson, and Brownrigg, to the directors, to the secretary, and to the agents in India, and were confidential communications after the matters in question in the suit had arisen, and in contemplation of or pending proceedings in respect of various matters, and in particular of the claims of the plaintiffs, and for the purpose of communicating to the persons to whom they were addressed the proceedings adopted in respect of such claims, and the opinion of the legal advisers consulted by the defendants, or for the purpose of being submitted to, or of obtaining information to be submitted to, such legal advisers and the shareholders. Other documents consist of letters to the defendants Elliott, Wilson, and Brownrigg, by the directors, or the secretary, or the agents in India, and are confidential communications *after* the matters in question in the suit had arisen, and in contemplation of or pending proceedings in respect of various matters, and in particular of the plaintiffs' claims, and for the purpose of being communicated to such legal advisers and shareholders, and for the purpose of obtaining their opinion thereon: and all the documents enumerated in the second and third schedules were confidential documents written after the matters in question in this suit had arisen, and in contemplation of or pending proceedings in respect of such matters, and for the purpose, among other objects, of assisting the defence of the defendants and the shareholders against any claims or proceedings in respect of such matters.

"Now, so far as the parties by or to whom these letters were sent were shareholders, I am of opinion that the letters are not privileged, except such parts thereof as contain the opinions of legal advisers. It was decided in *Whitbread v. Gurney*, 1 Younge, 541, that where there are several defendants, they are bound to produce letters which have passed between them with reference to their defence; and in the recent case of *Goodall v. Little*, 1 Sim., N. S., 155, Lord Cranworth has decided,

that 'there is no protection as to letters between parties themselves or from a stranger to a party, merely because such letters may have been written in order to enable the person to whom they were sent to communicate them in professional confidence to his solicitor.' Professional privilege is a ground of exemption from production adopted simply from necessity, as forcibly shown by Lord Brougham in *Greenough v. Gaskell*, 1 Myl. & K. 98, and ought to extend no further than absolutely necessary to enable the client to obtain professional advice with safety; beyond what is absolutely necessary for this purpose, it ought not to be allowed to curtail that most important and valuable power of a Court of Equity, the power of compelling a discovery.

"In this case all the parties interested in the documents are virtually before the Court, the defendants representing the whole partnership; and the defendants have the actual possession of the documents. These two circumstances are not to be found combined in any case where the production and inspection of documents have been refused upon the ground of the interest of other parties than the immediate defendants in the documents of which the inspection has been asked, or upon the grounds connected with the possession; and, under such circumstances, I think there is no principle which exempts documents so circumstanced from inspection.

"With regard to the character of the papers, the objection to production, upon the ground that they relate to the matters in dispute in the cause, and arose out of communications between the parties themselves with a view to their defence in the suit, is not supported either upon principle or authority. The appeal must therefore be dismissed, and with costs."—*Glyn v. Caulfield*, 3 M'N. & G. 463.

LEGAL ANTIQUITIES.

SALARIES OF THE JUDGES.

IN the discussions which are taking place in regard to the salaries of the Judges, it may not be uninteresting to notice the amount of their fees and emoluments in ancient times. From Mr. Foss's valuable and learned work on "The Judges of England," we extract the following from the reign of Edward III., commencing in the year 1327:—

"The salary of the Chief Justices of both Benches, at the beginning of the reign, was 40*l.* each, and that of other Judges 40 marks each. The latter stipend was all that was then given to the Chief Baron and his associates in the Exchequer.

"By stat. 20 Edward III., c. 1, after enacting that the Judges are to take no reward from any one but the king, it is especially stated that 'for this cause we have increased the fees (les fees) of the same our Justices, in such

manner as it ought reasonably to suffice them.' This increase is also particularly referred to in the proceedings against William de Thorpe for corruption four years afterwards.

"This seems to contradict Dugdale's assertion that they were reduced from the twenty-fifth year. He allows, however, that he sees no direct certainty; and the instances of smaller amounts which he produces may have been the balances after previous payments, or instalments of what was due; for the Treasury was not always ready to pay in full.

"The word 'fee' in the statute evidently meant the salary paid to them by the king, that being the ordinary name given to it; and had no reference to any larger payments to which the Judges were entitled on proceedings before them.

"It is curious, however, that the salaries themselves were not increased; but the expressions of the statute and the king are explained by entries on the Issue Roll of 44 Edward III., 1370, which has been published *in extenso* by Mr. Frederick Devon; where the following payments to the Judges will show that, though no change was made in their stipulated salaries, additional allowances were separately granted to them.

"John Knyvet, Ch. K. B., had 40*l.* yearly for his fee in the office; but he had also, by letters patent 'lately granted,' 100 marks yearly, to be received so long as he should remain in the office. Of this he received 20*l.* on November 14, in part payment of 50 marks then payable to him; and on November 28 he received 13*l.* 6*s.* 8*d.*, the balance. In the latter entry the grant is stated to be for his 'good service, and that he might more fitly maintain his estate.'

"Thomas de Ingelby, the only Puisne Judge of the King's Bench at that time, received 40 marks as his annual fee; but he also received 20*l.* a year as a Judge of Assize; and likewise an additional grant of 40*l.* per annum, beyond the fee, appointed to be paid to him as long as he should remain in the office.

"Robert de Thorpe, Ch. C. P. had 40*l.* for his fee of office; with an additional 40*l.*, which is described as having been granted to him for life, for his good service, and that he might more fitly maintain the military order which he had received from the king.

"The other Judges of the Common Pleas mentioned in this roll are John de Moubray, William de Wycheingham, and William de Fyncheden; all of whom have 40 marks as their fee, also 20*l.* as Justices of Assize; and Moubray 40 marks, and the two others 40*l.* by additional grants.

"The Chief Baron, and the two other Barons of the Exchequer, had each of them 40 marks for their annual fee: but the chief had also 20*l.* as a Justice of Assize, which the others had not; showing that they were not employed in that duty. One of them, however, Almaric de Shirland, had an additional grant of 40 marks, for services rendered and to be rendered, until otherwise provided for.

"The same record shows us that there were also some sergeants who were employed as justices of assize, and received salaries for that duty of 20*l.* a year each."

ORIGIN OF MASTERS IN CHANCERY.

These ancient officers, whose vocation it seems, by common consent, is about to be abolished, are thus described by Mr. Foss:

"There is nothing positively to show the number of the senior clerks of the Chancery, (*in whose place the Masters of that Court now stand*), unless the summons that was addressed to Robert de Pykering and to ten others in 30 Edward I., commanding them to appear before the Chancellor to give counsel on certain arduous affairs, and, if needful, 'by the inspection of their books,' is to be considered as including them all, except Adam de Osgodby, the Master of the Rolls. Most of the persons so addressed were undoubtedly clerks in the Chancery; perhaps all of them: but if so, the number must have been greater than twelve, because there were several others who notoriously held that place both before and after that date. If the number of clerks, including the Master of the Rolls, did not exceed twelve, as is generally supposed, there must have been some other officers of the Court who were equally entitled to attend the Parliament, as the persons summoned apparently on this account frequently extend beyond that number.

"We have seen that several of them acted for the Chancellor, holding the seal when he was absent; and in addition to their attendance in Parliament, several instances of their being appointed proxies for bishops and abbots occur in this reign, and of their being named as receivers and triers of petitions."

ANCIENT PLEADINGS.

"Pleadings," in their old legal form are, it seems, doomed to speedy annihilation, and their place to be supplied by a statement of the complaint or defence in "plain and intelligible language," — meaning, no doubt *popular* and not technical language. From the same ample store-house of legal history, to which we have referred, we extract the following notice of our system of pleading in the year 1362:—

"The pleadings in the Courts had been hitherto carried on in French. But that language was almost entirely unknown to the people of England, who began with justice to complain that their rights, their liberties, and their lives, were subject to laws which they could not understand: and that in their suits with each other, they knew not what was said either for or against them 'by their sergeants or other pleaders.' No possible advantage arising from the continuance of the absurd practice, the king was desirous of granting his people a boon by which they would be materially benefited, and he himself lose nothing; and accordingly, by a statute passed at Mi-

chaelmas, 36 Edward III., 1362, c. 15, it was enacted, that from the fifteenth of Hilary then next, all pleas whatever should be pleaded, defended, debated, and judged in the English tongue, but that they should be entered and enrolled in Latin.

"An awful pestilence overrun England in 1349, 23 Edward III., and raged so tremendously that the Courts did not sit in Trinity Term of that year. The Rolls also of Trinity Term, 35 Edward III., 1361, are wanting, on account of a recurrence of the same calamity. The proceedings of the latter term were twice adjourned; at first to the morrow of the Nativity of St. John the Baptist, and then to the octave of St. Michael."—From "*Foss's Judges of England*," vol. 3.

COURT OF CHANCERY.

NEW ORDER OF COURT.—INVESTMENT OF DIVIDENDS AND ACCUMULATIONS.

The 4th day of May, 1852.

WHEREAS under and by virtue of an Act passed in the 36th year of the reign of his Majesty King George the Third, chap. 52, intituled An Act for repealing certain Duties on Legacies and shares of Personal Estates and for granting other Duties thereon in certain Cases, and of An Act passed in the 37th year of the reign of his said Majesty, chap. 135, to explain and amend the said Acts, it is enacted that monies paid in under the first-recited Act into the Bank of England with the privy of the Accountant-General of the High Court of Chancery when paid in, be laid out by the said Accountant-General without any formal request for that purpose in the purchase of Bank 3l. per cent. Annuities. By virtue of the powers contained in the last-mentioned of the said Acts, and of all other powers enabling him in that behalf, The Right Honourable Edward Burtonshaw, Lord St. Leonards, Lord High Chancellor of Great Britain, doth hereby order and direct that the Accountant-General be at liberty, unless he shall have received on behalf of some party claiming to be entitled, notice in writing of an intended application to the Court for otherwise disposing of the fund, from time to time to lay out and invest the Dividends on such Stock when so purchased, and all Accumulations thereon as the same shall accrue due in the purchase of like Bank 3l. per cent. Annuities, without any formal request for that purpose, and place the Stock purchased with such Dividends to the said several matters and accounts to which the original sums of Stock respectively stand, and the Accountant-General is to declare the trust thereof when purchased, subject to the further order of this Court, and for the purposes aforesaid the Accountant-General is to draw on the Bank according to the forms prescribed by the Act of Parliament and the General Rules and Orders of the Court in that case made and provided.

ST. LEONARDS, C.

BANKRUPTS' BALANCE SHEETS.

To the Editor of the Legal Observer.

SIR,—According to the present practice of the Bankruptcy Courts, a bankrupt who is supposed to have given up every shilling he possesses to his creditors, is under the necessity of incurring a subsequent expense of some 40l. or 50l. in the employment of a professed accountant to prepare a balance-sheet, in such form as the Court requires, before he can pass his examination: and, in a case within my own experience within the last few days, a bankrupt has been taxed to the extent of 61l. in order to get this document framed. This happened too in a small estate, in which the assets only amounted to about 2,000l. and the debts to 3,000l. This ought not to be!—Here, a man, who wishes to act honestly, has either to submit to remain uncertificated, or to begin the world again with a fresh debt (supposing he can get credit) of 61l. hanging over him, after he is *supposed* to have been cleared of *all* his liabilities.

Either the Court should be satisfied with such a plain inartificial statement of his affairs as an ordinary man of business can give, or, if it exacts a skilfully got up document, such as none but professed accountants habituated to its preparation can frame, it should provide for the cost of it out of the estate, or some other available fund. But however that may be, it is quite contrary to the spirit of the Bankrupt Law to saddle the bankrupt with the burthen of such a cost. It involves too in all country cases, within the large circle of the London district, the further charge of the bankrupt's continued attendance in London upon his accountant during the period of the preparation of the balance-sheet, away from his home and family:—and the small allowance for maintenance usually allowed out of the estate is quite inadequate to this additional expense; thus further again involving the unlucky bankrupt.

The practice of the Commissioners varies much in directing an allowance out of the estate towards these expenses—in the 61l. case, the bankrupt only got 5l. towards his balance-sheet, although his dividend promises to be large and his integrity is unimpeachable; so that he has had to borrow 56l. for the balance-sheet alone, besides the funds necessary to meet his expenses in London, the maintenance money allowed by the Court having been exhausted by the expenses of his family at home; and with whom he might, but for the technical balance-sheet required, have spent his time, at no extra expense, in framing a business statement of his affairs; and thus been enabled to begin the world anew, a free, and *really* discharged man, instead of having his future exertions harassed and encumbered by a debt of 70l. or 80l.

If every bankrupt were furnished with a list of requisitions of all the accounts and information he would be bound to supply, surely the official assignee, or an accountant allowed by

the Court, might put the results into the required shape, and, if necessary, send it to the bankrupt to finally settle before filing the document in Court. This would seem to insure all the information the creditors could find necessary. But whatever may be the course of remedy, it cannot be questioned that the bankrupt ought to be relieved from the heavy tax of paying a professed accountant.

A SOLICITOR.

NOTES OF THE WEEK.

QUEEN'S BENCH SITTINGS.

THE Adjournment-day for the trial of Causes in London, is fixed for Friday, May 14.

COUNTY COURT APPEALS.

The Court of Queen's Bench will sit to hear Appeals from the County Courts on Monday next, the 10th May, at 10 o'clock.

Two or more of the Puisne Judges of the Court of Common Pleas will sit as a Court of Appeal on Tuesday, the 11th day of May, to hear and determine appeals from the County Courts, pursuant to the Statute 13 & 14 Vict. c. 61.

NEW MEMBERS OF PARLIAMENT.

William Laslett, Esq., for Worcester, in the room of Francis Rufford, Esq., who has accepted the office of Steward of her Majesty's Chiltern Hundreds.

Samuel Carter, Esq., for Tavistock, in the room of John Salusbury Trelawney, Esq., who

has accepted the office of Steward of her Majesty's Manor of Hempholme.

Sir Fitzroy Kelly, Knight, for the Eastern Division of the County of Suffolk, in the room of Frederic Baron Rendlesham, deceased.

STATE OF LAW BILLS IN PARLIAMENT.

House of Lords.

Master in Chancery Abolition.—Lord Chancellor. For 2nd reading.

Common Law Procedure Amendment.—The Lord Truro. In Select Committee.

Common Law Fees' Regulation. For 2nd reading.

District Courts of Bankruptcy Abolition.—Lord Brougham. For 2nd reading.

Compulsory Enfranchisement of Copyholds.—For 2nd reading.

Lunacy Proceedings Expenses.—Lord Lyndhurst. For 2nd reading.

House of Commons.

Relief of Suitors in Chancery. In Committee, May 7.

Law of Wills Amendment. In Committee, May 7.

County Courts' Further Extension.—Re-committed, May 12.

Attorneys' Certificate Duty Repeal.—Lord R. Grosvenor. May 25.

Charitable Trusts.—The Attorney-General. In Committee, May 10.

Trustees' Act Extension.—Sir W. P. Wood. For 2nd reading.

RECENT DECISIONS IN THE SUPERIOR COURTS

AND SHORT NOTES OF CASES.

Lord Chancellor.

Booms v. Prothero. April 16, 1853.

ISSUES AT LAW.—NEW TRIAL.—USELESS LITIGATION.—AGREEMENT.—EVIDENCE.

The Court will have regard to the smallness of the sum in dispute in a suit, and will prevent useless litigation, and exercise its discretion in refusing a new trial of an issue at law, where repeated trials have taken place and a verdict been given for the plaintiff: So held, on appeal from, and confirming, the decision of Vice-Chancellor Knight Bruce.

Semble, that a receipt in the following form was receivable in evidence as an agreement, though not as a receipt, being written on a 6d. stamp (which was insufficient) but which had been impressed with a 1l. stamp in the course of the suit:—"Recd. this 25th August, 1827, of Mr. Jenkin Richards now and before the sum of twenty-one pounds, being the amount of the purchase of three tenements sold by me adjoining the river Taff: Received the contents. Witness, John Swaine.—Evan Richards +" to

prove the contract of purchase of the houses in question.

THIS was an appeal from the decision of Vice-Chancellor *Knight Bruce* refusing to direct a new trial of an issue at law. The bill was filed for the specific performance of a contract, and on the trial in July, 1849, before *Wightman, J.*, at Cardiff, of the issues directed by the late Vice-Chancellor *Wigram*, as to whether the agreement for the purchase of the premises in question had been entered into, and whether the purchase-money had been paid in pursuance of such agreement, the following document was put in on behalf of the plaintiff to prove the payment:—

"Recd. this 25th August, 1827, of Mr. Jenkin Richards now and before the sum of twenty-one pounds being the amount of the purchase of three tenements sold by me adjoining the river Taff: Received the contents. Witness, John Swaine.—Evan Richards +"

This receipt was impressed with a sixpenny stamp, and had in the progress of the suit been stamped with a 1l. stamp.

A new trial of the issues was directed by

Lord Cottenham, in March, 1849, on appeal from Vice-Chancellor Wigram, and the trial took place in August, 1849, before Platt, B., when the plaintiff again obtained a verdict, and upon appeal from Vice-Chancellor Knight Bruce, granting a new trial of the 2nd issue, Lord Cottenham, in July, 1850, again directed a new trial of both issues (see 2 M'N. & G. 319); and on the plaintiff obtaining a verdict, Vice-Chancellor Knight Bruce refused to direct another trial, whereupon this appeal was presented.

Walker and Pulling in support.

The Lord Chancellor (St. Leonards), without calling on the other side, said, that although the smallness of the amount in dispute was no reason why parties should not seek redress at law, yet in this case it was imperative to exercise some discretion to prevent useless litigation. With respect to the receipt tendered at the trial, with all deference to the learned Judges who had expressed contrary opinions, the document might be receivable as an agreement, though, on account of the insufficiency of the stamp, not as a receipt. The appeal would be dismissed with costs.

May 3.—*In re Southee*—Appeal from Vice-Chancellor Knight Bruce dismissed with costs.

— 4.—*In re Hertford Charities*—Order confirming report and as to costs.

— 4.—*Chard v. Chard*—Appeal allowed from Vice-Chancellor Knight Bruce, without costs.

— 4.—*In re Walker's Trust*—Part heard.

Lords Justices.

In re Richards. March 30, 1852.

LUNATIC.—LEAVE IN ATTEND INQUIRY.—PARTIES ENTITLED IN REMAINDER.

Leave was given to infants by their mother and next friend to attend the execution of a commission against a lunatic, the object of which was to carry back the lunacy for 35 years, and override a settlement made by him, under which they were interested in remainder—the commission issued at the instance of a first and of a third cousin of the settlor, and the infants were the children of a first cousin.

THIS was a petition on behalf of infants, for leave to attend the execution of a commission de lunatico inquirendo, issued against Mr. Simon S. Richards, who was a first cousin of the petitioners' father, and had executed a settlement of his property in Jan. 1842, conveying it to trustees in trust for himself for life, then to the father of the petitioners for life, then to the infants for life, with remainders over as therein directed. The commission had issued at the instance of a first and a third cousin of Mr. Richards, and alleged a lunacy of 35 years, and thereby avoided the settlement.

Sir W. Page Wood and Webb in support, referred to *In re Nesbitt*, 2 Phill. 245.

Karslake contra, on the ground the interest

of the third party, and not of the lunatic, was intended, citing *In re Watts*, 1 Phill. 512, and *Ex parte Newbury*, cited 1 Phill. 513.

The Lords Justices said, the intention of carrying back the lunacy for 35 years was quite sufficient to entitle the petitioners to attend by their next friend, in order to prevent the finding of the jury overriding the settlement, but there must be an undertaking to abide by any order as to costs, both in regard to their own costs and so far as the costs might be increased by their attending the inquisition.

April 28.—*Ex parte James, in re Pryde*—Appeal dismissed, with costs.

— 28, 29.—*Money v. Jordan*—Cur. ad. vult.

— 29.—*Coope v. Carter*—Judgment varied of the late Vice-Chancellor Wigram.

— 29.—*Hart v. Tulk*—Part heard.

— 30; May 1.—*Ex parte Glyn, in re Ashkin*—Cur. ad. vult.

Master of the Rolls.

Ex parte Lowe. April 24, 1852.

TENANT FOR LIFE.—LANDS TAKEN BY RAILWAY COMPANY.—RE-INVESTMENT.—REFERENCE AS TO TITLE.

Upon a petition by the tenant for life of certain lands taken by a railway company, for the re-investment of the purchase-money in other lands, in accordance with a contract for their purchase, under which the title was to be deemed good prior to 1824, and a reference as to whether a good title, subsequent to that period, was shown; a reference was directed as to whether the contract was for the petitioner's benefit, and then, whether a good title was shown under the contract.

Speed appeared on behalf of the tenant for life of certain lands which had been taken by a company for the purposes of their railway, in support of a petition for the re-investment of the purchase-money thereof in other lands, which he had contracted to purchase, and for a reference to the Master to inquire whether a good title had been shown subsequent to the year 1824, anterior to which period, under the contract, the title was to be deemed as good.

The Master of the Rolls directed a reference to the Master, as to whether the contract was for the benefit of the petitioner, and then, whether a good title had been shown in accordance thereto.

April 29.—*In re Northern Coal Mining Company, ex parte Henniker*—Master's order discharged, with leave to the official manager to prove for calls in suit.

— 29.—*Boote v. Perks*—By arrangement, dissolution of partnership and receiver appointed.

— 29.—*Matthews v. Gardner*—Injunction granted.

— 29.—*Zulueta v. Vincent*—Motion refused for leave to pay moneys into Court.

— 28, 30.—*Smith v. Parkes*—Cur. ad. vult.

April 29, 30.—*May v. Westropp*—Injunction dissolved.

— 30.—*Gooday v. Colchester and Stour Valley Railway Company*—Bill dismissed, without costs.

— 30; May 1.—*Parkin v. Thorold*—*Cur. ad. vult.*

May 1.—*Langley v. Hall*—Claim referred to Master to whom former reference had been made in administration suit.

— 1.—*Bainbrigg v. Cream*—On special case, judgment as to construction of will.

— 3.—*Ayles v. Coe*—Exceptions overruled to Master's report.

— 3.—*Ward v. Ward*—Judgment herein.

— 4.—*Maxwell v. Maxwell*—Judgment on construction of will.

Vice-Chancellor Turner.

Flint v. Woodin. April 15, 1852.

CLAIM.—SPECIFIC PERFORMANCE OF CONTRACT.—WHERE AUCTIONEER VENDOR.

Held upon claim, and decreeing the specific performance of an agreement to purchase certain premises, that in the absence of evidence to show that any person had been engaged as a puffer at the sale, or of improper representations as to the value of the property sold, the fact of the auctioneer being also the vendor, was no ground for refusing the decree.

In this case, which was a claim filed for the specific performance of an agreement to purchase certain houses, it was objected to on behalf of the defendant, that the auctioneer was himself the vendor, and that he had misrepresented the value of the property, and had also employed a puffer at the sale.

Sir W. Page Wood and Boyle for the plaintiff; W. T. S. Daniel and Smale for the defendant.

The Vice-Chancellor said, that as there was no evidence of the plaintiff having engaged any person as a puffer at the sale, or that the representations of the vendor had been fraudulent, the fact of his also being the vendor and auctioneer, was not a ground for refusing the decree, and it was therefore made with costs.

April 29.—*Hughes v. Wells*—Plaintiff held entitled to lien.

— 30.—*Goodchap v. Weaving*—Exceptions to answer allowed with costs.

April 28; May 4.—*Gregory v. Smith*—Judgment on construction of will.

May 1, 3, 4.—*Ward v. Swift*—Stand over.

— 4.—*Wilkes v. Slaney*—Stand over for trial of issue at law.

Vice-Chancellor Kindersley.

Burney v. Clark. April 23, 1852.

MARRIAGE SETTLEMENT.—WHERE HUSBAND ABROAD.—SURRENDER OF POLICY OF ASSURANCE BY TRUSTEES.

An order was made, on the petition of the

trustees of a marriage settlement under which the husband was to insure his life and had subsequently gone abroad, for leave to the petitioners to surrender the policy which had been effected in pursuance of such covenant, and for the investment of the proceeds for the benefit of the parties interested under the settlement.

Bagshawe appeared in support of this petition on behalf of the trustees of the marriage settlement of Mr. and Mrs. Burney, and in which there was a covenant by Mr. Burney to insure his life, for an order that they might be at liberty to surrender the policy, which had been effected in pursuance of such covenant, to the insurance company, and for the investment of the proceeds for the parties interested under the settlement. It appeared that Mr. Burney, being in embarrassed circumstances, had quit-
ted his abode in October last, stating in a letter his intention of leaving England and not to return until he was in a position to maintain his wife and family. It was supposed he had emigrated to Borneo or Australia, which he had mentioned as favourable places for a man to succeed, and he had not since been heard of. The Vice-Chancellor made the order as asked.

April 28.—*In re Sutton and Duckmanton Charity*—Order approving of charity scheme.

— 30.—*In re United Patriots' Society*—Common order to account, Master to report reasons if unable to take the same.

— 30.—*Rand v. M'Mahon*—Order confirming compromise.

May 1.—*Evans v. Heath*—Decree for sale of drawings.

— 1.—*Wiggins v. Wiggins*—Judgment on construction of will.

April 28; May 4.—*Collett v. Newman*—Part heard.

— 29; May 1, 3, 4.—*Appleyard v. Holt*—*Cur. ad. vult.*

Vice-Chancellor Parker.

In re Oundle Union Brewery Company, ex parte Croxton. April 15, 1852.

ACTION AGAINST TRUSTEE FOR JOINT-STOCK COMPANY.—ACTION AT LAW.—WINDING-UP ACT.—COSTS.

Upon the trustee of a joint-stock company being sued at law on a bond given by him for money lent to the use of the company, notice was given thereof to the company, and upon their taking no steps, the trustee defended the action. He afterwards paid the amount of the debt and costs, and in an action at law directed upon appeal from the Master, refusing to admit his claim on the reference for winding up the company, he recovered a verdict: Held, that the trustee was entitled to be allowed his claim as a debt, with interest from the time of payment, together with the costs of the defence

to the action brought by the creditor, and the costs of the trustees before the Master, and of the appeal from the Master's decision, to come out of the estate.

THIS was an appeal from the decision of Master Richards, disallowing the claim of Mr. Croxton against the assets of the above company. It appeared that he had acted with a Mr. Prentice, as trustee of the company, and had borrowed for the use of the company of Mr. Hudson a sum of 1,000*l.* secured by bond. The appellant, having been sued at law by Mr. Hudson, gave notice thereof to the company, who, however, took no steps in the matter, and he was obliged to pay the amount due on the bond with costs. The appellant had succeeded in an action at law, directed by Vice-Chancellor Knight Bruce, on the question whether the payment claimed had been rightly made, and now asked for payment of such sum with costs, together with a further sum for the special damage he had sustained in procuring the money.

Wigram and Hislop Clarke in support; *Bacon and Rosburgh* for the official manager, contra, as to the costs of defending the action at law and the special damage, and the costs of this motion.

The Vice-Chancellor said, the appellant was not entitled to any sum by way of special damage, and directed the admission of his claim as a debt against the company for the amount paid to Mr. Hudson, with interest from the time of the payment, and the costs of defending the action brought by him, and also the costs of the action directed by the Court to be brought at law. The appellant's costs to be paid out of the estate.

April 28.—*Macdonnell v. Pope*—Judgment on claim for administration of estate.

— 29.—*Bostock v. North Staffordshire Railway Company*,—Stand over, on undertaking.

— 29.—*Warwick v. Hawkins*—Judgment on construction of will.

— 29.—*Meynell v. Surtees*—Injunction continued.

— 30.—*Hume v. Bentley*—Stand over.

— 30.—*Attorney-General v. Barker*—Stand over to Trinity Term.

May 1.—*Lane v. Fitzhugh*—Stand over.

— 1.—*Calhoun v. Bridger*—Petition dismissed.

— 3.—*Blair v. Ormond*—Decree in creditor's suit.

— 4.—*Thistlethwaite v. Garnier*—On special case, judgment on construction of will.

— 4.—*Farina v. Rossi*—Injunction *ex parte* granted.

Court of Queen's Bench.

Bear v. Bromley. April 16, 1852.

BENEFIT SOCIETY.—JOINT-STOCK COMPANIES' REGISTRATION ACT.—NOT ESTABLISHED FOR PURPOSES OF PROFIT.

A society called the "Mutual Friends' So-

ciety," consisted of upwards of 100 members holding shares of 40*l.* each, and when loans were about to be made by the society they were put up to competition and granted to the highest bidder,—the premiums and loans being repaid by instalments into the general fund, and the regularity of such payments being enforced by fines: Held, that this was not a society within the 7 & 8 Vict. c. 110, as established for "purposes of profit," but was only for the benefit of the members.

Held, therefore, that the trustees were entitled to recover in an action upon a promissory note given by one of the members to secure repayment of a loan made to him by the society.

THIS was an action by the trustees of the Mutual Friends' Society to recover from one of the members the amount, with interest, of a promissory note given by him to secure the re-payment of a loan from the society. On the trial before L. C. J. Campbell, the plaintiffs obtained a verdict subject to leave reserved to move to enter a nonsuit. It appeared that the society in question was established at Colchester in the year 1848, and consisted of upwards of 100 members holding shares of the value of 40*l.* each, and that upon loans being made, they were put up to competition and were granted to the highest bidder, and that the premiums and loans were paid by instalments into the society's general fund,—the regularity of the payments being enforced by fines.

Hors now moved for a rule nisi, and contended that the note could not be sued on, as being given by a joint-stock society of more than 25 members, established for the purpose of profit,—the society not being registered under the Registration Act (7 & 8 Vict. c. 110).

The Court said, this society was not a society established for the purposes of profit, it being merely the case of several partners or shareholders subscribing for the benefit of a partnership of which they were members, and entitling them to the benefit of dealing in money transactions among themselves, and it was not therefore within the meaning of the statute, referring to *Regina v. Whitmarsh*, 15 Q. B. 600. The rule was therefore refused.

April 28.—*Stapylton v. Crofts*—Rule absolute for new trial.

— 28.—*Regina v. Mayor, &c., of Ashton-under-Lyne*—Judgment for appellants.

— 29.—*Regina v. Parkinson*—*Cur. ad. vult.*

— 29.—*Regina v. Chichester*—*Cur. ad. vult.*

— 29.—*Regina v. Great Western Railway Company*—Rule nisi for mandamus on defendants to construct branch railway.

— 29.—*Regina v. Justices of Suffolk*—Rule absolute to quash order of sessions quashing order of removal.

— 29.—*Regina v. Inhabitants of Monks Kirby*—Rule discharged to set aside *side-bar*

rule for allowance of prosecutor's costs on indictment for non-repair of highway.

April 29.—*Stuart v. Anglo-Californian Gold Mining Company*—Part heard.

— 30.—*Quartermen v. Guardians of the Poor of Oxford*—Leave to withdraw demurrer to plea, and to amend.

— 30.—*Lowndes v. Earl of Stamford*—Cur. ad. vult.

— 30.—*Ford v. Beale*—On demurrer to plea, leave to amend.

May 1.—*Regina v. Inhabitants of County of Southampton*—Cur. ad. vult.

— 1.—*Overseers of Birkenhead v. Trustees of Birkenhead Docks*—Cur. ad. vult.

— 3.—*Regina v. Liverpool, Manchester, and Newcastle-upon-Tyne Junction Railway Company*—Mandamus discharged, with costs.

— 3.—*Gage v. Newmarket Railway Company*—On demurrer to pleas, judgment for defendants.

— 4.—*Lloyd v. Oliver*—Rule refused for new trial.

— 4.—*Eden v. Wilson*—Judgment for defendant on construction of will, upon special case from the Master of the Rolls.

— 4.—*Lloyd v. Oliver*—Rule for new trial.

Queen's Bench Practice Court.

(Coram Mr. Justice Wightman.)

Small v. Batho. May 3, 1852.

WITNESSES.—REVIEWAL OF TAXATION.—IDENTITY OF DEFENDANT IN ACTION FOR CRIM. CON.

A rule was refused for the reviewal of the Master's taxation in an action of crim. con., disallowing the expenses of witnesses for the plaintiff staying in town to identify the defendant upon his not being produced in pursuance of notice for the purpose, and held that they were only entitled to their expenses of attending the trial and a day coming and returning.

THIS was a motion for a rule nisi to review the taxation of the Master in this action for crim. con., disallowing the expenses to which they had been put by remaining in town in order to identify the defendant, his attorney not having produced him in accordance with notice for the purpose. It appeared that the Master had only allowed the expenses for the days they had attended the trial and for coming and returning.

Barstow in support.

The Court said, that the rule must be refused,—the expenses disallowed being those incurred in qualifying themselves to give evidence.

April 28.—*Glyn v. Wilson and others*—Rule nisi for inspection of documents.

— 30.—*In re Dye, ex parte Collins*—Rule nisi on attorney to execute assignment of articles of clerk.

May 1.—*Wilde v. Sheridan*—Cur. ad. vult.

May 3.—*Ex parte Haylock*—Rule nisi for habeas corpus.

— 4.—*Earle v. Dowding*—Cur. ad. vult.

— 4.—*Crawshaw v. York and North Midland Railway Company*—Cur. ad. vult.

Court of Common Pleas.

Odams and another v. Avery. April 15, 1852.

CHARTER-PARTY. — FREIGHT. — BILLS OF LADING. — STOPPAGE IN TRANSITU.

The plaintiffs, who were the holders of bills of lading of part of the cargo of a ship chartered by N. of the defendant, and which cargo was consigned to C. and Co. by N., paid to the consignees the amount of freight in the bills of lading: Held, that as the jury had found that C. and Co. were then entitled to receive the freight, and that their authority was not then revoked, and such finding was not made out as being against the evidence, the plaintiffs were entitled to recover from the defendant for the stoppage at the docks by his directions of the cargo, until payment of the charter-party freight, which had not been paid.

THE plaintiffs were holders of certain bills of lading for some parcels of oil cake, shipped on board the *Mary Henzell*, of which the defendant was owner, by a Mr. Newman, of New York,—Messrs. Cooper, Fitton, and Co., of London, being the consignees, and it appeared that on Dec. 28, 1850, the plaintiffs' broker paid the freight for the goods in question, named in the bills of lading, to the consignees, and upon the defendant having, by his broker, Mr. Hutchinson, put a stop on the cargo at the docks, this action was brought to recover damages for such stoppage. The consignees stopped payment in May, 1851. On the trial before Mr. Justice Williams, the jury found that the consignees had authority to receive the freight, and that their authority was not revoked before the payment by the plaintiffs, and the verdict having passed upon that finding for them, this rule had been obtained on 16th Jan. last for a new trial.

Bramwell, Q. C., and Willes, now showed cause.

Byles, S. L., and Unthank, in support, contended the plaintiffs and the other owners of goods were not entitled to have their goods upon payment of the freight named in the bills of lading, but were liable to pay the charter freight which had not been paid, and also that the authority to receive the freight given to Messrs. Cooper & Co. had been revoked, and transferred to Mr. Hutchinson.

The Court said, that as the question of countermand of the authority was for the jury, and it had not been made out that the verdict was against evidence, the rule would be discharged on that ground; and it must also be discharged on the other ground; as the jury found that Messrs. Cooper and Co. were entitled to receive the freight, and the plaintiffs had there-

fore a right to their goods upon payment of the freight named in the bills of lading.

April 28.—*Beavan v. Walker*—Rule discharged for defendant's discharge out of custody.

— 28.—*Anderson and others v. Hillier*—Rule discharged to enter verdict for defendant or to reduce damages.

— 28.—*Gassiot v. Carpmac*—Rule absolute for new trial.

— 29.—*Fisher and another v. Bell and others*—*Cur. ad. vult.*

— 30.—*Heap v. Barton and another*—Rule discharged to enter verdict for defendants on the third plea.

May 1.—*Robinson v. Gill*—On demurrer to declaration, judgment for defendant.

— 1, 3.—*Austen v. Manchester, Sheffield, and Lincolnshire Railway Co.*—*Cur. ad. vult.*

— 3.—*Bogg v. Pearse and another*—Rule absolute to set aside nonsuit, and enter verdict for plaintiff.

— 4.—*Myers v. Perigal and others*—Part heard.

— 4.—*In re Hakewell*—Stand over.

Court of Exchequer.

Barbart v. Allen. April 15, 1852.

LAW OF EVIDENCE AMENDMENT ACT.—ADMISSIBILITY OF WIFE OF DEFENDANT AS WITNESS.

Held, *discharging a rule nisi for a new trial, that the wife of a defendant was not admissible as a witness on behalf of her husband under the 14 & 15 Vict. c. 99, s. 1; and (per Jervis, L. C. J.,) semble, that the consent of the parties, after having objected to the admission of her testimony, did not entitle her evidence to be received.*

Hertslet showed cause against this rule, which had been obtained on 13th January last, for a new trial of this action on the ground of the improper rejection of the wife of the defendant to give evidence on his behalf. It appeared that the objection to her being examined, which had been at first made, was afterwards withdrawn. *Giffard* in support.

The Court said, that the wife of a party to a suit was not a competent witness if the other side objected to her evidence being admitted. The law was so under Lord Denman's Act, (6 & 7 Vict. c. 85,) which excepted the husbands and wives as well as the parties, and it was not

altered by the 14 & 15 Vict. c. 99, s. 1,¹ which admitted the evidence of the parties, inasmuch as it was silent as to husbands and wives of parties. And (per L. C. J. *Jervis*) the consent of the parties did not, in the present case, render the evidence admissible. The rule was therefore discharged.

April 28.—*Justices of Bedfordshire and others v. Churchwardens, &c., of St. Paul's, Bedford*—On special case, judgment for appellants.

— 28.—*Justices of Bedfordshire v. Commissioners of Bedford Town*—Judgment for respondents, with costs.

— 29.—*Galvanised Iron Company v. Westoby*—*Cur. ad. vult.*

— 30.—*Dwyer v. Collins*—*Cur. ad. vult.*

— 30.—*Whitehead v. Lord, administrator*—Rule discharged to enter verdict for defendant.

May 1.—*De Rothschild v. Royal Mail Steam Packet Company*—Rule absolute to enter verdict for plaintiff on second and third issues.

— 1.—*Haddan v. Lancaster*—Rule nisi for a new trial.

— 1.—*Stevenson v. Dickinson*—Rule refused for new trial.

— 1.—*Stubbs v. Stubbs*—Rule refused for new trial.

— 1.—*Osgood v. Collis*—Rule refused for new trial.

— 1.—*Jolly v. Hancock*—Rule refused for new trial.

— 1.—*Ellicombe v. Stevenson*—Rule refused for new trial.

— 1.—*Perry v. Doidge*—Rule nisi for new trial.

— 4.—*England v. Arrowsmith*—Peremptory undertaking to proceed to trial.

— 4.—*Meggison v. Lady Glamis*—*Cur. ad. vult.*

— 4.—*Ash v. Dawney*—Rule enlarged.

¹ Which repeals so much of section 1 of the 6 & 7 Vict. c. 85, as provides that the said act shall "not render competent any party to any suit, action, or proceeding individually named in the record, or any lessor of the plaintiff, or tenant of premises sought to be recovered in ejectment, or the landlord or other person in whose right any defendant in replevin may make cognizance, or any person in whose immediate and individual behalf any action may be brought or defended, either wholly or in part."

ANALYTICAL DIGEST OF CASES,

REPORTED IN ALL THE COURTS.

House of Lords.

APPEALS.

BILL OF EXCEPTIONS.

Explanation as to direction.—Irregularity.—A bill of exceptions was tendered to a Judge's direction, and, under the 55 Geo. 3, c. 42, s. 7, was signed by him at the time of the trial. The draft, thus prepared, was, some months after-

wards, more formally drawn up, and was tendered to him for signature. He refused to sign it, unless a sentence, explaining his direction, was introduced into the bill, and the party excepting finally consented to its introduction. The bill of exceptions, with this explanation forming part of it, was presented to the Court.

Held, that the introduction of this explana-

tion was highly irregular; but that, being on the record, the Court below, and this House, could only look to the record, and could neither receive an affidavit of the facts, nor examine the draft of the exceptions, originally prepared and signed. *Earl of Glasgow v. Hurlst and Campsie Alum Company*, 3 H. of L. 25.

See Evidence.

COMPANIES' CLAUSES' CONSOLIDATION ACT.

Scotland.—*Railway Companies' books.*—*Shareholders.*—The Companies' Clauses' Consolidation Act for Scotland, (8 & 9 Vict. c. 17, s. 9,) requires, in the same terms as the English Statute of that name, a book to be kept, containing, in alphabetical order, the names of the shareholders, with the number of the shares to which such shareholders shall be respectively entitled, distinguishing each share by its number, and the amount of the subscriptions paid on such shares. The 29th section of the statute makes such book *prima facie* evidence of a person being a shareholder, and of the number and amount of his shares.

Held, 1st, that as this was an exceptional privilege in favour of the company, the provisions of the statute with respect to the mode of keeping the book must be strictly complied with; and, 2ndly, that an entry in the book, describing A. as possessed of a certain number of shares, numbered from one given number to another given number, and stating a gross amount as paid upon these shares, was a sufficient compliance with those provisions, so as to render the book admissible in evidence.

The statute requires that a book, to be called "The Register of Shareholders" shall be kept. The book actually kept was marked "Register of Proprietors."

Held, that this variation in the title did not prevent it from being given in evidence. *Bain v. Whitehaven and Furness Junction Railway Company*, 3 H. of L. 1.

DECREE NOT ADJUDICATED ON.

Subsequent appeal.—*Semble*, that a decree appealed from, but not adjudicated on, further than the dismissing the appeal generally, may be included in a subsequent appeal. *Tommey v. White*, 3 H. of L. 49.

See *Enrolment of Decree*.

DEVISAVIT VEL NON.

Examination of attesting witnesses.—In every issue *devisavit vel non*, the Court of Equity requires that all the attesting witnesses to a will shall, if it is possible to procure their attendance, be examined. *M'Gregor v. Topham*, 3 H. of L. 132.

Case cited: *Powell v. Cleaver*, 2 Bro. C. C. 504.

See *Heir-at-Law*.

DEVISE.

Construction.—*Implication.*—A. devised lands, in trust for J. B., a reputed son, for his life, and, after his decease, for and to his first and every other son successively in tail male,

and in default of such issue to his daughter or daughters, to hold to them, if more than one, and their heirs, as tenants in common; and, in default of issue of the said J. B. to and for the testator's right heirs:

Held, that J. B. took only an estate for life, and that no remainder in tail could be implied after the limitation to the daughters. *Blackhorn v. Edgley*, 1 P. Williams, 605, *questioned arguendo*. *Baker v. Tucker*, 3 H. of L. 106.

Cases cited: *Turke v. Frencham*, 2 Dyer, 171; *Goodright v. Dunham*, Dougl. 264; *Graves v. Hicks*, 5 A. & E. 38.

ENROLMENT OF DECREES AND ORDERS.

Appeal.—*Semble*, that decrees and orders which have not been enrolled, may, after any length of time, on being enrolled, be brought under appeal with a recent order made in the same cause, and duly enrolled. *Tommey v. White*, 3 H. of L. 49.

EVIDENCE.

Foreign law.—*Surprise.*—Evidence of foreign law was tendered on the trial of an issue before a jury. It was objected to, on the ground that as the issue did not, in terms, raise any question of foreign law, the evidence was a surprise on the party against whom it was produced. The evidence was admitted, and the objection of surprise was put on the record as one of the heads of a bill of exceptions. The evidence was really inadmissible, on the ground that the *lex fori* was that by which alone the issue could be decided; but no notice of this ground of objection was taken in the bill of exceptions:

Held, that the Court of Error could not look beyond the bill of exceptions, but must decide on that alone, and that the objection of surprise was not sufficient to exclude the evidence. *Bain v. Whitehaven and Furness Junction Railway Company*, 3 H. of L. 1.

See *Foreign Law*.

EXCEPTIONS ABANDONED IN COURT BELOW.

Argument of.—An exception, abandoned in the Court below, was allowed to be argued here. *Bain v. Whitehaven and Furness Junction Railway Company*, 3 H. of L. 2.

FOREIGN LAW.

Law of country where contract to be enforced not where made.—*Evidence, admissibility of.*—

The law of the country where a contract is to be enforced, not that of the country in which it is made, governs the question of admissibility of evidence on a trial arising out of a contract. *Bain v. Whitehaven and Furness Junction Railway Company*, 3 H. of L. 1.

Cases cited: *Yates v. Thomson*, 5 C. & F. 1; *Don v. Lippmann*, 3 C. & F. 544.

See *Evidence*.

HEIR-AT-LAW.

New trial.—*Devisavit vel non.*—There is no absolute rule in a Court of Equity requiring that Court, as of course, to grant a second trial in an issue of *devisavit vel non*, when the first trial has terminated against the heir-at-law, if

the Judge in Equity is satisfied that no new light can be thrown on the subject by a further investigation.

Though there may be an outstanding legal estate, which compels the heir-at-law to come into Equity, he cannot on that account claim a right to have the issue tried a second time, if the Court, in the exercise of its discretion, should deem the first verdict satisfactory.

Circumstances under which the Court of Equity, in the exercise of its discretion, was held properly to have refused a new trial. *M'Gregory v. Topham*, 3 H. of L. 132.

Cases cited: *Locke v. Colman*, 2 Myl. & Cr. 46; *White v. Wilson*, 13 Ves. 87; *Wilson v. Beddard*, 12 Sim. 28.

See *Devisavit Vel Non*.

JUDGMENT ON APPEAL IRREVERSIBLE.

Except by Act of Parliament.—A judgment of the House of Lords is conclusive, and cannot be reversed or corrected, except by act of Parliament. *Tomney v. White*, 3 H. of L. 49.

MINES.

Alum.—Coal wastes.—Leases.—A lease of alum mines gave the lessee the right to obtain alum from certain coal wastes. A subsequent lease of the coal mines provided that nothing thereby granted should injure the rights of the parties who held the alum mines. The alum existed in the coal wastes. The coal lessees could not thoroughly work the coal without removing the pillars which supported the roof; but by doing this, the alum would be rendered impossible to be reached.

Held, that the coal pillars could not be removed. *Earl of Glasgow v. Hurlet and Campsie Alum Company*, 3 H. of L. 25.

MISDIRECTION OF JUDGE.

See *Bill of Exceptions*.

PREBENDARY'S PROFITS.

Pleading.—The 28 Hen. 8, c. 11, s. 3, gives the "tithes, fruits, oblations, obventions, emoluments, commodities, advantages, rents, and all other whatsoever revenues, casualties, or profits, certain and uncertain, affering or belonging to any" dignity, prebend, or benefice therein mentioned, which shall accrue between the occurrence of a vacancy and a new appointment, to the appointee. The 5 & 6 W. 4, c. 30, directs the profits of dignities or benefices, without cure of souls, becoming vacant during existence of a certain Ecclesiastical Commission, to be paid to the treasurer of Queen Anne's Bounty, who is to keep an account of the receipts and expenses, and retain the balance until he shall be otherwise ordered "by competent authority." By a subsequent statute, the Crown is declared entitled to appoint, notwithstanding the existence of the commission in question, three persons to certain prebends therein named. One of these appointees, having duly demanded from the treasurer of Queen Anne's Bounty the profits received by him during the vacancy,

brought an action for money had and received, to recover them. A special verdict (on a verdict found in his favour) declared these to be "the net profits of the prebend."

Held, that a judgment for the plaintiff given on this verdict could not be sustained, because it did not distinguish the sources from which these profits might arise, nor show whether they were derived from the corpus of the prebend to which he was individually entitled, or from sums due to him in respect of his share of the funds of the corporation aggregate, of which, as prebend, he was a member. *Repton v. Hodgson*, 3 H. of L. 72.

RAILWAY.

1. *Registration act.—Allottee of shares.*—The 7 & 8 Vict. c. 110, does not create any new liability in an allottee of shares, beyond what his own contract imports. *Hutton v. Thompson*, 3 H. of L. 161.

2. *Acceptance of shares.—Payment of deposit.—Contributory.—Winding-up Acts.*—A. wrote a letter of application for shares in a railway company which was provisionally registered, and received an answer in the usual form, declaring that certain shares had been allotted to him, on which he was required to pay a deposit. A. paid the required deposit, but neither signed the subscribers' agreement nor the parliamentary contract. The scheme was abandoned.

Held, that A. did not, by his letter of application for shares and by paying the deposit thereon, become a "member" of the company, or a "contributory," within the meaning of the Joint-Stock Companies' Winding-up Acts. He merely bound himself to take such shares as he had applied for, should the company ever be in fact established.

Held, therefore, that his name had been improperly put by the Master among the list of contributories, and that the Court below had rightly ordered it to be expunged from the list. *Hutton v. Thompson*, 3 H. of L. 161; *Norris v. Cooper*, *Ib.* 165.

See *Companies' Clauses' Consolidation Act*.

TRUST ASSIGNMENT.

Sale without notice.—A debtor assigned his house and business, in trust for payment of his debts, retaining to himself the management of the business, under the superintendence of the trustees, who, on his failing to perform his covenants in the trust deed, were thereby empowered, after having given him three months' notice, to sell the house and business. Such notice was given, but waived by consent of the creditors and trustees, assembled at a general meeting: *Held*, that a sale afterwards made by the trustees, without further notice, was unauthorised and unlawful. *Tomney v. White*, 3 H. of L. 49.

WILLS.

See *Devisavit Vel Non*.

WINDING-UP ACTS.

See *Railway*, 2.

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SATURDAY, MAY 15, 1852.  
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ADMINISTRATION OF THE BANKRUPT LAWS.

APPELLATE JURISDICTION.

THE unsatisfactory state in which the Bankrupt Law has been left by recent legislation, becomes every day more apparent, and the dissatisfaction consequent upon its administration promises to be aggravated by the manifest conflict of opinion which prevails, not merely upon matters of law, but upon the application of questions of fact, between the Commissioners and those who are intrusted with the authority of reviewing and setting aside the decisions of those learned functionaries.

It is within the knowledge of most of our readers, that before the passing of the Statute 5 & 6 Vict. c. 122, the certificate of a bankrupt—the document testifying that the person made bankrupt was discharged from his debts—was signed by a certain proportion of his creditors, and the Commissioner thereupon certified that the bankrupt had conformed himself to the law, and that there did not appear to be any reason to doubt the truth or fulness of the discovery made by the bankrupt of his estate and dealings. By the Stat. 5 & 6 Vict., the consent of creditors was dispensed with, and the granting of the certificate was left altogether in the judgment and discretion of the Commissioner acting in the prosecution of the fiat, but the Commissioner was to have regard, not only to the conformity of the bankrupt, but to his conduct as a trader before as well as after his bankruptcy, and was bound to hear any of the creditors of the bankrupt against the allowance of the certificate. If the Commissioner thought it his duty to refuse the bankrupt's certificate, the latter remained uncertificated without any right of appeal.

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Thus the law stood until the passing of the Bankrupt Law Consolidation Act, 1849, under which the Commissioners' discretion in allowing or refusing the certificate is not restricted, but he is expressly empowered to allow or refuse it, "whether the allowance of such certificate be opposed by any creditor or not."¹ The refusal of the Commissioner, however, as well as all orders made by him may be the subject of appeal to the Vice-Chancellor sitting in Bankruptcy, under the 12 & 13 Vict. c. 106, s. 12, and now, by the Stat. 14 & 15 Vict. c. 83, s. 7, to the Court of Appeal in Chancery constituted by that act.

The right of appeal under the Statutes last referred to, has been exercised in several recent instances in which the Commissioners, in the exercise of their discretion, have refused certificates to bankrupts. In a case *Ex parte Johnson, in re Johnson*,² in which a firm, consisting of a father and two sons, became bankrupt in 1850, where the father's certificate was suspended for one year by the senior Commissioner (Evans), Vice-Chancellor Knight Bruce, upon appeal, reversed the decision of the Commissioner and granted the bankrupt an immediate certificate. In a subsequent case, (*Re St. Albans Bank*), in which Mr. Commissioner Holroyd, in an elaborate judgment,³ refused the bankrupts certificates or protection, Vice-Chancellor Knight Bruce, upon the application of one of the bankrupts (Sturt), and without any attempt to question any of the facts upon which the Commissioner's judgment was founded, unhesitatingly granted the bankrupt protection; and in a very late case of *Ex parte Martyn*,

¹ 12 & 13 Vict. c. 106, s. 193.

² Referred to in *Ex parte Dornford*, 20 Law J., 7 Bank.

³ Reported in Fonblanque's Reports, p. 84.

in *re Martyn*,⁴ where Mr. Commissioner Goulburn, in a well-considered judgment, refused the bankrupt's certificate without protection, the Lords Justices, upon appeal, granted the certificate, giving the appellant his costs upon the petition of appeal.

The Commissioners sitting in Bankruptcy, not having the assistance of a jury, are necessarily Judges as well of the facts as the law, they exercise a direct personal superintendence in the prosecution of petitions for adjudication from the moment when the petition is first opened until the hour when the bankrupt is heard upon his application for a certificate, they have the advantage of hearing the bankrupt, his witnesses, and the witnesses of those who oppose the allowance of his certificate, examined *videlicet*, and having investigated his dealings and affairs with the assistance of the official assignee, are apparently well qualified to judge whether his conduct as a trader entitles him to a certificate absolving him from his pecuniary obligations and leaving his just creditors without the power of further enforcing their claims against either his person or estate.

It is quite manifest, from the cases cited, and others which might be referred to, that the Commissioners in Bankruptcy and the learned Judges upon whom the responsibility devolves of controlling and correcting the judicial decisions of the Commissioners, entertain very different views as to the principles and spirit in which the law with regard to bankrupts,—and especially that branch of it relating to the granting or refusing of certificates,—should be administered. We have studiously avoided a reference to the facts in any of the cases adverted to, in which the Commissioners and the Court of Appeal have differed in their estimation of the bankrupt's conduct. In all such cases it is but fair to conclude, that the more indulgent interpretation that has been put upon the bankrupt's conduct is also the most correct, and that the Commissioners have acted under a mistaken sense of duty. It is, of course, the duty of the Commissioners to submit cheerfully and unreservedly to the decisions of the superior tribunal appointed by the Legislature to revise their decisions upon all questions of law, whilst in forming their conclusions upon matters of fact, the Commissioners, we apprehend, are bound to exercise an independent judgment precisely as if no corrective tribunal existed.

When it is recollected, how much consideration and attention was bestowed upon the clauses of the Bankrupt Law Consolidation Bill during the progress of the measure through Parliament, by those who so zealously represented the merchants and traders of the metropolis upon that occasion, and how important it is to the whole trading community of the kingdom that the Bankrupt Laws should be administered in an intelligible spirit, and upon principles calculated to maintain commercial morality, it must be regretted that different branches of the Court entertain conflicting sentiments upon matters of primary importance.

It would be in vain to hope for any legislative interference upon such a subject during the existence of the present Parliament. Whenever the matter is considered, the striking anomaly more than once pointed out in this publication, cannot escape attention, that whilst a bankrupt whose certificate is suspended for a month, may, if so advised, appeal, and successfully too, against the decision by which he is aggrieved to that extent, an insolvent debtor, who is remanded to prison for a period of three years under the operation of the penal sections of the Insolvent Act, is without appeal and without remedy, whatever may be the hardships of his case, or the real or supposed injustice inflicted upon him. Assuredly, the state of the law which admits of such results requires to be amended.

EXTENSION OF THE COUNTY COURTS.

POSTPONEMENT OF EQUITY JURISDICTION.

In a letter from Lord Brougham, of the 24th April, addressed to Lord Lyndhurst, and published in the new Number of the *Law Review*, Lord Brougham, adverting to the Chancery Reform Bill says, "so confident am I that this great Bill will pass, that I have consented to the Equity clauses being struck out of the County Courts' Bill (now in the House of Commons), because, as they stood, they would in some measure have clashed with the New Chancery Scheme. These will, however, be made the subject of a separate Bill, which will be prepared after the new scheme comes into operation, and so as to work with it."

The County Courts' Bill has since been discussed in Committee, in the House of Commons; but the discussion was abruptly terminated by the adjournment of the House.

⁴ Reported in *The Times* of Saturday, May 8.

REMOVAL OF THE COURTS FROM WESTMINSTER.

ESTIMATED EXPENSE OF SITE, &c.

HAVING stated in our last publication the several insuperable objections to the continuance of the Courts at Westminster, with reference—1st, to their inconvenient site, and 2nd, their inconvenient construction and insufficient number; and set forth the undeniable advantage to the public as well

as the Profession of their removal to the vicinity of the Inns of Court;—having also briefly adverted to the “ways and means” by which the expense of removal might be provided,—we proceed now to lay before our readers a statement with which we have been favoured, on the authority of Sir Charles Barry, of the estimated expense of purchasing the site for the proposed New Courts of Justice, and their various Offices, and of erecting the Buildings thereon.

	£	s.	d.	£	s.	d.
Cost of the Site (about 700 feet by 490 feet, or $7\frac{1}{2}$ acres)	.	.	.	675,074	0	0
Rough estimate of the proposed Courts, combined with the Common Law and Equity Offices now scattered in various localities	300,000	0	0			
To which add for approaches, foundations, sewerage, warming, and ventilating, fire-proofing, gas and water services, fittings, fixtures, furniture, and decorations, &c.	180,000	0	0			
Contingent and incidental charges	42,000	0	0			
				522,000	0	0
Gross cost of Site and Building				1,197,074	0	0
Deduct for the value of ground-rents for Chambers to be erected on portions of the proposed Site not immediately required for the New Courts and Offices, to be leased for 75 years, with power reserved for re-purchasing or occupying the Chambers as Offices attached to the Courts, if required	316,500	0	0			
And for the amount to be realised by the Sale of the Masters, Record and Writ Clerks, Registrars, Accountant-Generals, and Secretaries of Bankrupts and Lunatics Offices	60,000	0	0	376,500	0	0
				£820,574	0	0
From this sum, we conceive, may ultimately be deducted the value of the rent which will be saved for the Offices of the Taxing Masters and the Lunacy Commissioners	24,000	0	0			
The value of the Rolls Offices	12,000	0	0			
Also the saving of rent for the Offices of all the Common Law Courts, estimated at not less in value than	25,000	0	0			
To which add the value of the present site of the Courts at Westminster	86,000	0	0	147,000	0	0
				£673,574	0	0

HISTORY AND STATE OF SUITORS' FUND.

Having proposed that a portion of the Sutors' Surplus Fund of 1,241,188*l.* stock should be appropriated for raising the amount required, it may be desirable to state the nature of the Sutors' Fund and its accumulation of interest and the mode in which portions of the fund have been from time to time applied.

The Sutors' Fund contains two separate accounts, which are respectively intitled, “Account of Monies placed out for the benefit and better security of the Sutors of the High Court of Chancery,” and “Account of Monies purchased with surplus Interest arising from Securities carried to the account of Monies placed out for the

benefit and better security of the Sutors of the High Court of Chancery.”¹

The amount of stock on the first-mentioned account, which may be conveniently distinguished by the name of “*The Sutors' Cash Fund*,” on the 1st of October, 1851, was 2,590,928*l.* 18*s.* 6*d.*, and has arisen from the investment previous to 1838, under special Acts of Parliament of specific sums, part of

¹ We are indebted to an article in the *Law Review* for May, 1850, on the New Courts of Justice, for a considerable portion of the following statement abridged from that work, but the amounts of stock are taken from the latest accounts, and the information continued to the present time.

the Suitors' cash, paid by them into Court for safe custody pending litigation, and since 1838, under orders of the Lord Chancellor, made from time to time in pursuance of the Act of 1 & 2 Vict. c. 54, s. 1, of such parts of the Suitors' cash as his lordship may direct to be laid out; and the total amount of the Suitors' unemployed cash which has been so laid out is 2,252,464*l.* Os. 7*d.*

The reason why so large a sum of unemployed cash remains in Court is that cash, when paid in, and interest on the stock in Court when received by the Accountant-General, is not invested until the solicitor in the cause obtains an order directing the investment to be made, and leaves with the Accountant-General the order and a request in writing for that purpose.

It may be here noticed that the amount of the stock and securities in Court is about 46 millions, and that in the above sum of 2,252,464*l.* Os. 7*d.* Suitors' unemployed cash invested in the Suitors' Cash Fund Account is comprised the sum of 247,495*l.* and interest on upwards of 300,000*l.* stock which has remained on different accounts not dealt with for upwards of 10 years; and therefore it is very improbable that the whole of the above sum so invested will ever be demanded by the Suitors.

The amount of the stock on the second-mentioned account, which, for brevity's sake, may be termed "The Accumulation Fund," on the 1st of October, 1851, was 1,241,188*l.* 9*s.* 7*d.*, and has arisen, as the account imports, from the investment and accumulation of the *surplus interest* of the stock on the first-mentioned account, after defraying the charges which have been created thereon.

The stock on these two accounts, amounting together to 3,332,117*l.* 8*s.* 1*d.*, are, by the 1 & 2 Vict. c. 54, s. 2, and the 5 & 6 Vict. c. 103, s. 26, only to be resorted to when the demands of the Suitors have diminished the floating balance of cash at the bank to so low a sum as to render a sale of any portion necessary to increase that balance. The amount of the payments of cash into Court annually average seven millions, and the payments out of Court average the same amount, and the balance of cash in the Bank of England averages 250,000*l.*

The Suitors' Fund* was instituted by the Act of 12 Geo. 2, c. 24, (A. D. 1739.) This Act, as well as the three subsequent Acts of 4 Geo. 3, c. 32; 5 Geo. 3, c. 28; and 9 Geo. 3, c. 19, directed, that out of the unemployed cash in the bank belonging to the Suitors, four several sums, not exceeding together 140,000*l.*, should be invested on the Suitors' Cash Fund Account, and out of the interest the salaries of certain officers of the Court should be paid,

amounting together to 3,800*l.*; and, as the interest amounted to 4,697*l.* 10*s.*, there was an annual surplus of 897*l.* 10*s.*, which was invested on the account before termed "*The Accumulation Fund*," and this surplus interest, with the accumulation of interest, amounted in 1774 to 10,200*l.* Bank Annuities, and 141. 7*s.* 2*d.* cash.

We now come to the Act of 14 Geo. 3, c. 43, passed in 1774, and printed among the private acts which for the present purpose is of some importance; whereby, after reciting that the Six Clerks' Office had become very ruinous, and the offices of the Registrar and the Accountant-General were from their situation and condition in great hazard of being destroyed by fire, and that the surplus interest arising from the monies (part of the Suitors' unemployed cash) invested pursuant to the aforesaid acts, then [remaining on the Accumulation Fund Account] amounted to 10,200*l.* Bank Annuities and 141. 7*s.* 2*d.* cash, "which annuities and cash are unappropriated, and that it will be *no injury to the Suitors of the said Court if the same, and also the surplus interest which shall arise from the said annuities, and from the securities purchased pursuant to the several acts before mentioned, shall be employed towards raising a fund for rebuilding and erecting the said several offices, and in purchasing such ground as may be necessary for such purposes*; and if a sum of money not exceeding 50,000*l.*, part of the money [belonging to the suitors of the Court] lying dead and unemployed [in the Bank of England], shall be placed out at interest on Government or Parliamentary securities, and the interest thereof, or so much as shall be necessary applied for the same purposes, it was enacted, that out of the Suitors' unemployed cash a sum, not exceeding 50,000*l.*, should be invested, and out of the interest arising therefrom, and out of the said 10,200*l.* Bank Annuities and 141. 7*s.* 2*d.* cash, such sums should be paid as the Lord Chancellor should in his discretion deem necessary, and be applied under the direction of the Court in defraying the expenses attending the obtaining that act, and then in rebuilding the Six Clerks' Office with the offices belonging thereto, and in purchasing ground and houses for that purpose, and the sum of 10,000*l.* in erecting proper and convenient offices for the Registrar and Accountant-General of the said Court, and in purchasing such ground and houses as should be necessary for that purpose.

In 1791, by the Act of 32 Geo. 3, c. 42, 300,000*l.*, part of the Suitors' unemployed cash, was authorised to be invested, and out of the interest a sum not exceeding 30,000*l.* was directed to be applied in completing and building the present Masters' Offices in Southampton Buildings.

In 1800, by the Act of 50 Geo. 3, c. 164, 200,000*l.*, further part of the Suitors' unemployed cash, was directed to be invested, and out of the interest a sum not exceeding 12,000*l.* was to be applied in erecting the present Exa-

* In the Report of the Committee on Fees (Parliamentary Paper, 1848, No. 158, pp. 58, 204, and 208) will be found the valuable statements as to the Suitors' Fund furnished by Mr. Parkinson, the Chief Clerk of the Accountant-General.

miners' and the other Chancery offices in the Rolls Yard.

Having thus shown the mode in which the Accumulation Fund has been from time to time appropriated, we think (to repeat the language of the Act of 14 Geo. 3, c. 43, authorising the application of the whole of the then Accumulation Fund in erecting the Six Clerks', Registrars', and Accountant-General's Offices) "it will be no injury to the Suitors of the Court if a portion of the present Accumulation Fund shall be employed towards raising a fund for rebuilding and erecting the required Courts and Offices of Justice, and in purchasing such ground as may be necessary for that purpose."³

It has been before shown that the estimated net amount that would be required for the purchase of the site for the New Courts, and erecting the same with a margin for contingent expenses, would ultimately be in round numbers about 670,000*l.*, and as the Accumulation Fund amounts to 1,241,188*l.* 9*s.* 7*d.* Stock, there would at the present price, viz., 99, remain a large surplus on this fund after raising the sum required. The total amount on both funds would then be reduced to about 3,000,000*l.*, which would be sufficient to raise the 2,252,464*l.* Suitors' cash invested, even if the price of Stock were to fall as low as 75.

For the due security of the Suitors we should, however, propose the insertion in the Act authorising the erection of the Courts, a clause (similar to the 2nd section of 4 & 5 Wm. 4, c. 68, or the 4th section of 11 & 12 Vict. c. 77), that if the securities on either the Suitors' Cash Fund, or the Accumulation Fund should be insufficient to answer the demands thereon, the sum taken for the purposes of erecting the New Courts, or so much thereof as might be required, should be made good by Parliament.⁴

On the completion of the New Courts, the site of the present Courts at Westminster, valued by Sir Charles Barry at 86,000*l.*, would revert to the Crown, and become available

either for Government Offices or for carrying out the projected improvements in connexion with the New Houses of Parliament; and the Chancery Offices on the Rolls Estate (which cost 12,000*l.*) might also revert to the Crown; and the rents of the present Common Law Offices, amounting to 2,500*l.* per annum, would then be saved to the Consolidated Fund.

Thus, it appears, that without throwing any burthen whatever on the Consolidated Fund, the whole expense might be readily defrayed of concentrating under one roof, in the heart of the metropolis, all the Courts and Offices of Law and Equity,—greatly facilitating and expediting the administration of justice,—and effecting a vast public improvement.

COUNTY COURT EXTRA COSTS.

It is now well-established, by the construction of the Superior Courts, that the 91st section of the County Courts Act, 9 & 10 Vict. c. 95, does not preclude an attorney from recovering a reasonable remuneration for his professional services *out of Court*. The decision of the Court of Common Pleas on this point has only just been reported in the 9th volume of the Common Bench Reports, and we deem it useful to quote the very satisfactory reasons on which the learned Judges proceeded. The judgment was delivered by Mr. Justice Maule, who said:—

"This was a motion to review the taxation of an attorney's bill. The Master had disallowed certain items for business done in conducting preliminary inquiries before commencing a suit in one of the County Courts established under the act of 9 & 10 Vict. c. 95. The ground of the disallowance was, that the 91st section of that act prevented the attorney from having or recovering, for the services in question, any larger sum than 15*s.* And this construction of the section appears to have been adopted by the Court of Queen's Bench, in the case of *Ex parte Clipperton, re Grees*, for which we were referred to the Jurist, vol. 12, p. 1044.

"Having heard the case argued on this question, and having taken time to consider it, we find ourselves compelled to adopt a different construction of the section in question. That section begins by providing that no person but an attorney, or a barrister instructed by one, or a person allowed by the Judge to appear instead of such party, shall be entitled to appear in a County Court for any other party: and such person is, by the next clause, restricted from being entitled to be heard to argue a question as counsel, without leave of the Judge. This is followed by a clause in the following words,—'And no

³ The late Master of the Rolls (Lord Langdale), in his evidence before the Committee on the Courts of Law and Equity, in 1842, (Answer 518,) expressed himself thus:—"If the Surplus Interest Fund [the Accumulation Fund] were entirely clear, and the Cash Fund were not charged to its full extent, I should think that the suggested application of the Surplus Interest Fund to the erection of buildings to a proper and prudent extent might be allowed."

⁴ The former Act authorised the application of the Suitors' Fund in Ireland in erecting the present Four Courts in Dublin, and the latter Act authorised the application of a sum not exceeding 21,300*l.* out of the Unclaimed Funds in the Court of Insolvent Debtors, in enlarging the Insolvent Court in Lincoln's Inn Fields.

person, not being an attorney admitted in one of her Majesty's Superior Courts of Record, shall be entitled to have or recover any sum of money for *appearing or acting* on behalf of any other person in the said Court; and no attorney shall be entitled to have or recover *therefore* any sum of money, unless the debt or damage claimed shall be more than 40s., or to have or recover more than 10s. for his fees and costs, unless the debt or damage claimed shall be more than 5l., or more than 15s. in any case within the summary jurisdiction given by this act.' The section then goes on to provide that no fee exceeding 1l. 3s. 6d. shall be allowed for employing a barrister '*as counsel in the cause*,' and that the expense of employing a barrister or attorney shall not be allowed, on taxation of costs, unless 5l. is recovered or claimed, or without the order of the Judge.

"The first clause,—regarding the description of persons who may be allowed to appear in the County Court for another party, or instead of such party, seems very clearly to apply only to the appearance in the Court as a representative of a party who would otherwise be obliged to appear for himself. The next provision, restricting the right to be heard to argue as counsel, also evidently applies only to a proceeding in Court. The clause in question begins with this provision,—'And no person, not being an attorney, admitted, &c., shall be entitled to have or recover any sum of money for *appearing or acting on behalf of any other person in the said Court*.' These words, evidently, in their literal construction, apply only to what is done *in the Court*: and this is not only the literal sense, but the natural and obvious sense of the words; and the subject of the preceding part of the section being matters in Court only, confirms this construction; indeed, it would be difficult, by affirmative words, more expressly to confine the enactment to what is done *in Court*, than by those actually used,—'Appearing or acting on behalf of any other person *in the said Court*.' The words next following, on which the present question immediately arises are,—'And no attorney shall be entitled to have or recover *therefore* any sum of money, unless the debt or damage claimed shall be more than 40s., or to have or recover more than 10s. *for his fees and costs* unless the debt or damage shall be more than 15s. in any case within the summary jurisdiction given by this act.' Here, the word '*therefore*' clearly is intended to refer to the preceding words, '*for appearing or acting on behalf of any other person in the said Court*;' so that the right to have or recover anything in cases not above 40s., is also taken way only in respect of the appearing or acting *in Court* on behalf of the party to the suit. It is true that the word '*therefore*' is not repeated in the provision as to cases, where 10s. or 15s. may be had or recovered; the words being, to have or recover more than 10s. '*for his fees and costs*,' without saying '*therefore*.' But it appears to us that this provision is to be con-

sidered as applying to fees and costs for appearing and acting on behalf of any other person *in the said Court*. If this were not so, it would follow, that, in cases not exceeding 40s., an attorney might recover for what was done out of Court, but not in cases exceeding that amount. Indeed, the Court of Queen's Bench, as reported in *The Jurist*, seem to have considered that the restriction of fees to 10s. and 15s., as well as the preceding one, which deprives the attorney of any claim in cases not exceeding 40s., should be understood of fees '*for appearing and acting in Court on behalf of another*,' and expressed that opinion in the commencement of their judgment; observing that '*the words of the section are very clear, that no attorney shall be entitled to have or recover *therefore* (that is, for appearing or acting on behalf of any other person *in the County Court*) more than the sums therein specified.*'

"It appears, therefore, on considering the words of the enactment, taking the language of the legislature in its ordinary sense, that the restriction in question does not apply to business done out of Court, before a suit is commenced: and we think that, looking at the general scope of the enactment, we ought to come to a similar conclusion.

"The subject of the section is, proceedings in County Courts,—a very fit subject of regulation in any act for establishing such Courts. The act certainly contemplates that the hearing of cases in the County Courts will usually be short and summary. The limitation of fees for acting for a party at such a hearing, is a natural incident to such Courts; and such limitations are not unusual in respect of proceedings in Courts. But, where one man employs another to do work and labour for him, for a reasonable remuneration, it seems unreasonable to say the contract shall *not* be binding if the employment end in a suit in a County Court, but *will* be binding if it do not. We think such a restriction as this would be on the liberty of entering into such contracts as the parties think fit, ought not to be implied, unless by a necessary implication; and there is none such here.

"The Court of Queen's Bench is reported to have said, in *Eparte Clipperton, in re Green*, that the legislature did not intend to make any distinction between an attorney's right to recover from the opposite party, and from his own client; but we think there is no reason for construing the act as abolishing the existing distinction between the costs which may be allowed between party and party, and the remuneration which an attorney may recover from his client. The framers of the act use appropriate words, in speaking of both kinds of claim,—the attorney's claim against his client being described as a right '*to have or recover*,' while costs between party and party are described as costs '*allowed on taxation*.'

"On the whole, we think there is nothing in this section to take away the right of an

attorney to be paid a reasonable amount for work done out of Court, before the institution of a suit, or to take away the right of the Superior Courts,—which alone have jurisdiction to tax attorneys' bills,—to allow a reasonable remuneration for this description of labour. The rule must therefore be made absolute." *Keighley v. Goodman*, 9 C. B. 338.

NOTICES OF NEW BOOKS.

The Principles of the High Court of Chancery, and the Powers and Duties of its Judges; designed as The Student's First Book on Equity Jurisprudence. By THOMAS A. ROBERTS, Esq., of the Middle Temple, Barrister-at-Law. London: Wildy & Sons. 1852. Pp. 296.

THE design of this treatise is well explained in the following extract from the Preface:—

"The author, in presenting these pages to the Profession, trusts he will not be considered presumptuous in thus attempting to facilitate the student's entrance into the abstruse studies which are necessary for the full understanding of the extensive department of legal learning of which he has here ventured to treat.

"The want, which all persons, on commencing the investigation of any subject, invariably experience for some general and concise statement of the leading features and doctrines of the particular branch which they desire to master, has led the author to hope, that this, his endeavour to epitomise the comprehensive subject of Equitable Jurisdiction, will not be unfavourably received; and to the completion of the following pages, he has been the more induced by the favourable reception which Mr. Williams's able introductory *Treatise on the Laws of Real and Personal Property* have met with from the Profession.

"The author's aim, throughout the following pages, has been, not in the least to supersede any of the learned works which treat of the various subjects of Equity Jurisprudence, but simply to afford the student some slight assistance towards the attainment of the knowledge with which such works are replete. From them he has taken the liberty (without impropriety, he hopes,) of selecting such portions as he considered best suited to lay before the reader, and to them, instead of to the numerous decisions and dicta which support the various propositions which are laid down, has he purposely referred. The principal references have been made to the learned and excellent Commentaries of the late lamented American Judge, from which, conjointly with the numerous valuable treatises of our own countrymen, has the following work been constructed; and to such the student, as he progresses in the knowledge of the different matters treated of,

is particularly referred for further and fuller information."

A work of this kind was much required to aid the student in the commencement of his labours, and we think Mr. Roberts has rendered good service to the younger part of the Profession. The subjects of which he has treated may be thus briefly stated:—

The First Part of the Volume comprises—

I. Of the Court of Chancery. 2. Its branches, and the powers of its Judges. 3. The nature of Equity. 4. Maxims applicable to Equity. 5. Effect of Time in barring relief.

The Second Part divides the Principles of Equity under the following titles:—

First, *Remedial*:—1. Frauds generally, including actual. 2. Constructive frauds. 3. Accident and mistake.

Second, *Executive Equity*:—1. Trusts, and particularly of express. 2. Implied and constructive. 3. Trustees, and others in their situation. 4. Charities. 5. Specific performance.

Third, *Adjustive Equity*:—1. Account. 2. Administration. 3. Legacies and *donationes mortis causæ*. 4. Satisfaction and election. 5. Mortgages and other incumbrances. 6. Apportionment and contribution. 7. Partnership and agency. 8. Rents and profits, and various other matters of account. 9. Partition and boundaries.

Fourth, *Protective Equity*:—1. Writ of injunction, *ne exeat* and *supplicavit*. 2. Bills of peace, and to establish wills. 3. Interpleader. 4. The cancellation and delivery up of instruments. 5. Payment of money into Court, and receivers.

Fifth, *Protective Equity to Persons under Disability*:—1. Married woman. 1. The husband's and wife's power of contracting with and granting to each other. 2. Their respective rights to property. 3. The wife's equity to a settlement. 4. The wife's separate estate. 5. The wife's pin-money. 6. The wife's paraphernalia. 7. Separation of husband and wife.

II. Infants. 1. Their guardianship. 2. Their maintenance. 3. Their marriage.

Sixth, *Auxiliary Equity*:—1. Discovery. 2. Preservation and perpetuation of evidence.

In conclusion, the author notices the various measures for the improvement of the Administration of Justice in the Court of Chancery, now before Parliament.

MR. JUSTICE STORY ON CHANCERY REFORM.

It cannot fail to be interesting to our readers to be made acquainted at the present time with the opinions of that eminent lawyer Mr. Justice Story on the many agitated questions of Chancery Reform. In "The Life and Letters of Joseph Story," edited by his son, we find, amongst others, a letter to Mr. Edwin W. Field, the solicitor, from which we shall make some extracts applicable to the several topics under consideration.

1. Of *Pleadings and Practice* the learned Jurist says, that no reform will be permanently useful which does not at once speed causes, lessen expenses, and simplify processes and proceedings, and he suggests:—

"1st. As to bills, they should contain nothing more than the narrative part, which should be disposed of in distinct and brief articles, so that the answer might, without repeating the articles, be required to respond to each article by its number fully and distinctly, and should not, in respect to such article, be allowed to supply any deficiency by reference to any other part of the answer. The prayer of the bill should be for general relief only, and the Chancellor might in special cases direct the plaintiff to specify in writing what special or peculiar relief he asked, either before or at the hearing.

"The interrogatory part of the bill (except so far as it requires an answer on oath, and this might be dispensed with at the option of the plaintiff) to be dispensed with; but the plaintiff to be at liberty to examine the defendant on oath as he might any other witness, on interrogatories to be propounded to him in writing, and answered in writing. The examination, when practicable, to be in the presence of the parties or their solicitors, in the examiner's office or under the commission, so that where the answer to a particular interrogatory is defective or unsatisfactory, new interrogatories touching the matter may be instantly put and answered.

"If the answer to the interrogatories should be unsatisfactory or evasive, the bill to be taken *pro confesso* to the extent thereof unless the Chancellor should order a re-examination.

"No cross bill to be necessary to be filed by the defendants to establish any of the matters of defence stated in the answer; but the defendant to have a right to examine the plaintiff, in like manner upon interrogatories as to all or any of the matters in the bill and answer. The defendant to be at liberty to pray relief on his side as to the matters of defence set up in his answer in opposition to the bill, and the Court in its discretion to have the right to grant it as fully as it could upon a cross bill.

"All documents and papers referred to in the bill and answer to be referred to as in a

schedule annexed, and the parties, the dates, and briefly the objects of the documents to be stated in the schedule; either party to be at liberty to have a copy thereof at large at his own expense if he required it, and all the documents and papers lodged for a reasonable time in the proper office for inspection. The parties to be at liberty to require an order from the Court on the other party, to state whether he means to contest the execution of any particular document or not; and if he contests it without good cause, the Court to have authority to award costs occasioned thereby."

2. As to *Evidence*:—

"All testimony of witnesses to be taken upon interrogatories in writing, put in the presence of the parties or their agents, and they to be at liberty to file supplemental interrogatories before the Commissioner at the moment, so as to elicit all the facts and circumstances. This is now, I believe, the universal practice in America. Certainly it is so in all the States with which I have any acquaintance. The parties attend before the Commissioner and put all such questions as they please, referable to the points in issue; and very often they dispense with the filing of any prior interrogatories. The whole evidence is therefore perfectly known to both parties in the progress of the cause, and long before what is technically called publication; there is not a single Commissioner at a time, who takes the testimony. This practice, so far from being productive of inconvenience, is deemed highly useful, and indeed makes the evidence approach very nearly to *viva voce* evidence in the cause. It seems to me, also, that the Chancellor, at his discretion, should have authority to examine witnesses *viva voce* at any stage of a cause, where he should deem it proper for the purposes of justice."

3. As to the defendant's *Answers*:—

"The answer should be required to be put in at a short, fixed period after service of process, and the time should be enlarged only by the Court upon cause shown; upon default to answer, the bill should be liable to be taken *pro confesso*, and the matter thereof decreed accordingly, without any issue of process of contempt, unless for the purposes of justice. An answer should become positively indispensable, and then it might be enforced. This is our American practice, and we find no difficulty in it. It cuts down at once all unnecessary delays."

4. Regarding *Chamber Practice*, the worthy Judge says:—

"There is one other subject which strikes me to be of very great importance. It is, that there should be fixed days for the Court to sit, as it were, at chambers, to hear motions and make orders in all causes. Orders, which are of course, should be passed by the proper officer of the Court, without any applications to the Court itself. Motions should be *viva*

voce, unless directed by the Court to be in writing; and instead of written notices of motions served on the parties and proved by affidavit, a short notice, posted up in the proper office for a fixed number of days, should be *per se* notice of motion, which should supersede the necessity of other notices.

"In my own circuit of Equity causes, I hear the parties on a motion *voce* in open Court; the solicitors on each side taking notice thereof without delay; and I make the order, or vary it, or deny it, without any formal proceedings whatsoever, and frequently dictate to the clerk the very terms of the order, at the instant when it is made. When the Bar are once trained to this course, they are pleased with it, and find it saves so much time and expense, that they seek to accommodate each other in the arrangement of their business. It would probably be found useful to have all the Judges in rotation, except the Lord Chancellor, sit at chambers for this purpose, and the same rules should prevail in all the Courts."

5. On the paramount difficulties relating to the *Masters' Offices*, it is said:—

"In respect to the abolition of the proceedings in the Master's office, I confess that it has not appeared to me necessary, and indeed I think that he is a most important and necessary auxiliary of the Court in taking accounts and auxiliary inquiries. What is wanted is, that there should be a thorough reform in the mode of proceedings in the Master's office. In America there is rarely any delay, and he proceeds very much as a Judge in Court. If upon any important question he were to certify the point and facts to the Court for its opinion, from time to time, in the progress of his inquiries, so that the Court might give the proper direction, much time might be saved.

"It strikes me, also, that a very great portion of all the Chancery business preparatory to the final hearing of the cause, might be, and should be, managed by the solicitors alone. This would, I am persuaded, elevate the character of that portion of the Bar, and would be a most salutary measure in its general influence. It is constantly so done in most of the States of America; or rather, to put the case exactly as it generally is, every solicitor is a counsellor, and every counsellor acts at times as a solicitor. We find no inconvenience from this course."

6. In Administration suits, the suggestions are as follow:—

"It appears to me, also, that bills which are almost of course, might be heard summarily on petition, such as creditors' and administration bills, and the proper references made without delay. In consent causes, the Court might hear the parties upon short petition and make the necessary orders at once. I am by no means sure that much more might not be done to prevent useless litigation; as, for example,

by a petition to show cause why a bill should not be filed, which, if the Court thought it either maintainable or unmaintainable, might be summarily disposed of by consent of the parties. But of this I should speak with more hesitation, as I have no experience to aid my judgment. But after all, I fear that much reform cannot be made without striking at the root of the present mode of taxing costs. If costs are to be paid upon all orders, and for all copies, and per page for all pleadings, item per item, there is infinite temptation to multiply papers as well as delays. If a fixed allowance of moderate amount were made for every bill and answer, without reference to length or space, if the sum for all orders in a cause, including all proceedings and evidence, should never be allowed beyond a fixed sum, except upon a fiat of the Court upon a very special case shown, much might be done to stop all useless delays. If the Court were authorised to deprive either party of costs who was guilty of unreasonable delays in the cause, this would have an excellent tendency the same way."

7. On the subject of the necessary parties to a suit, it is observed that—

"The present rules in Equity are inconvenient, and in some cases occasion a total failure of justice. Why not say at once that the question of parties shall rest in the discretion of the Court, and that in all cases the Court may proceed to decree between the parties before the Court, without prejudice to the rights of persons not parties; and that other persons, not made parties, but having an interest in the case, might intervene in the cause for their own interest *pro tanto*, and become parties *inter se*, at any proper stage of the suit, to protect those interests. A recent statute of our Congress has authorised the Courts of the United States to proceed in Equity cases as between the parties before the Court, without prejudice to other parties, and has thus in a great measure broken down the old rule as to parties. The new rule seems to work well as far as we have as yet had any experience under it."

It has been generally imputed to solicitors that they have taken no part in, and indeed have generally opposed, legal reforms. The truth is, that the reforms which have for the most part been advocated were either mischievous or impracticable, and therefore the solicitors properly objected to them. But where they came from a judicious source, and were likely to be beneficial, the solicitors have encouraged them. As an instance, we may mention that the original letter of Mr. Justice Story, which contained the above suggestions, was laid before Lord Langdale, the late Master of the Rolls, by Mr. Edwin Field, accompanied by the following remarks:—

"My Lord,—Although part of the enclosed letter from Judge Story is personal to myself, I think I should not be acting with due respect to him if I did not lay it before those who have power to carry out any of the suggestions which may approve themselves to them; and I therefore take the liberty to send it to you. Might I at the same time urge, as I would most earnestly, the early adoption of some of the suggestions sent to your lordship a year and upwards ago by the Law Institution Committee. A year's subsequent consideration of them has, so far as my opinion is worth anything, further convinced me of their value; and your lordship must see how impossible it will be to get the Committee to act further, (should their services be considered worth asking for,) unless some definite attention is seen by them to be paid to their very cautious recommendations.

"I believe I have already said as much to your lordship verbally; but you will, I am sure, give such right credit to my motives as to pardon me for repeating to you what I am sure I cannot too strongly endeavour to impress on your mind."

This was in the year 1842, when Lord Langdale, Vice-Chancellor Wigram, Mr. Pemberton Leigh, and Mr. Sutton Sharpe, were engaged in considering the practice of the Court under a special letter from Lord Chancellor Lyndhurst.

REPEAL OF THE ANNUAL CERTIFICATE DUTY.

We need scarcely remind our readers, particularly in the country, that the motion of Lord Robert Grosvenor for leave to bring in the Bill for repealing the Annual Certificate Tax will be made on Tuesday, the 25th instant. The Solicitors in every town in England and Wales, and in all the important districts of Ireland and Scotland, have been informed of the intended application to the justice of Parliament, and they will doubtless address their representatives by letters, and the House by petitions, in such numbers as to ensure a full attendance. These calls on the further exertions of the provincial Solicitors should not be relaxed, notwithstanding any contrary advice which may be given by persons who are not concerned in the management of the case, and who are unacquainted with all the grounds and reasons on which the measure is again pressed on the attention of Parliament.

If a postponement were voluntarily made by those who are intrusted with the charge of bringing forward the Bill, and the sense of the House were not expressed in the present Session, the future progress of the

measure might be prejudiced. We believe, however, that the various Law Societies are unanimously of opinion that there should be no delay in urging forward the renewed application.

It is true that the remission of the Duties on Paper, Newspapers, and Advertisements has been refused. Those taxes, however, bear on the whole community, not on one class only, and they produce a million and a half to the revenue. The Certificate Duty is of small amount, compared with the total income of the State. And, as noticed in several of the petitions, the large reduction in the emoluments of Attorneys by the alterations in the Law, ought to weigh materially in the question.

We trust, therefore, that every possible exertion will be made to bring in the Bill on the 25th instant; but its operation will, of course, not commence till next November. Another decided majority will settle the question once for all.

TRINITY TERM EXAMINATION.

THE Examination of persons applying to be admitted Attorneys, will take place on *Thursday*, the 3rd June next, at half-past nine in the forenoon, at the Hall of the Incorporated Law Society, in Chancery Lane. The Examination will commence at ten o'clock precisely.

The articles of clerkship and assignments, if any, with answers to the questions as to due service, according to the regulations approved by the Judges, must be left on or before *Saturday*, the 29th instant, at the Office of the Law Society, Chancery Lane.

Where the articles have not expired, but will expire during the Term, the Candidate may be examined conditionally, but the articles must be left within the first seven days of Term, and answers up to that time.

If part of the Term has been served with a *Barrister*, *Special Pleader*, or *London Agent*, answers to the questions must be obtained from them, as to the time served with each respectively.

A paper of questions will be delivered to each candidate, containing questions to be answered in writing, classed under the several heads of—1. Preliminary. 2. Common and Statute Law, and Practice of the Courts. 3. Conveyancing. 4. Equity, and Practice of the Courts. 5. Bankruptcy, and Practice of the Courts. 6. Criminal Law, and Proceedings before Justices of the Peace.

Each candidate is required to answer *all* the Preliminary Questions (No. 1); and it is expected that he should answer *three* or more of the other heads of inquiry,—*Common Law* and *Equity* being two thereof.

NOTES OF THE WEEK.

INCONVENIENCES OF THE COURTS AT WESTMINSTER.

DURING the last Term the Lord Chief Justice said, that there was considerable difficulty about the Court sitting at Nisi Prius during Term, in consequence of there being no extra Court to sit in. The Court at the Sessions House, which they had been permitted by courtesy to use, was required by the Chairman of Quarter Sessions, and in the Vice-Chancellor's Court, which they had sometimes occupied, the Lords Justices were sitting. The Commissioners of Woods, however, to accommodate the Nisi Prius Judge, had prepared a

place for him at the top of the large tower of the New Houses, four or five stories high—(laughter)—and it would be for the young gentlemen of the Profession to practise up there, but their seniors would find it no joke. It might be necessary to adjourn the Banco Court during the Nisi Prius Sittings in Term, for it did not seem to be thought necessary that both Courts should sit, as proper accommodation was not provided for doing so.

NEW MEMBER OF PARLIAMENT.

Isaac Butt, Esq., for Harwich, in the room of Sir Fitzroy Kelly, who has accepted the office of Steward of her Majesty's Manor of Hempholme.

RECENT DECISIONS IN THE SUPERIOR COURTS

AND SHORT NOTES OF CASES.

Lord Chancellor.

Cutts v. Salmon. March 20, 31, 1852.

SOLICITOR.—PURCHASE AT AUCTION OF CLIENT'S ESTATE.—SPECIFIC PERFORMANCE OF CONTRACT.

On appeal from and confirming, with costs, the decision of Vice-Chancellor Knight Bruce, held, that the solicitor for the vendors of an estate, who had attended the sale by auction and had, without any public intimation there was no reserved price, openly bid for and been declared the purchaser of one of the lots, was not entitled to enforce the specific performance of the contract; and held that it was his duty to have divested himself of his character of their solicitor and to have seen that they had other legal advice.

This was an appeal from the decision of Vice-Chancellor Knight Bruce dismissing, with costs, a bill for the specific performance of an agreement to sell a farm called Salmon's Farm, in Essex. It appeared that the plaintiff was the solicitor for the testator, and that the defendant, Edmund Salmon, who was not then of age, was seised in fee of the farm in question, together with other property, as tenant in common with his two brothers; and that they employed the plaintiff to put up the property for sale by auction. At the sale, which took place in June, 1845, the plaintiff became a bidder for the lot in question, consisting of three closes, and having been declared the purchaser for 2,500*l.*, received the usual signed memorandum from the auctioneer. It appeared, also, that one of the conditions of sale requiring an immediate deposit of 10 per cent. and the remainder at the ensuing Michaelmas when possession was to be given, had not been complied with, but that the plaintiff had notwithstanding obtained possession of the closes and was still in possession. Payments had been

made to the defendant of about 200*l.* by the plaintiff.

Lee and F. S. Williams, for the plaintiff, in support of the appeal; C. P. Cooper, Marins, Elderton, and Craig, for the defendants, contra, were not called upon.

The Lord Chancellor (St. Leonards) said, there was no rule of law which absolutely prohibited an attorney from becoming the purchaser of his client's property, but a prudent attorney, who was well advised, would, before he attempted to make the purchase, divest himself of his character of legal adviser, and take care that his client had other professional aid. It appeared, however, in the present case that the plaintiff was the solicitor of the testator and in possession of the title-deeds and will, and that he bought the lot, the subject of the present question. He bid openly for the lot, without any public intimation there was no reserved bidding, and the probable inference in the minds of those who attended the sale must have been, as it was known he was the solicitor for the parties, that he was bidding for the owners of the estate, and not for himself, and he thereby prevented other parties bidding. Then the deposit of 10 per cent. of the purchase-money had not been paid down in accordance to the conditions of sale, and he was in reality therefore bidding for the estate with the knowledge that he had only to pay the money when it was convenient, although possession was taken at the time named. And, therefore, without imputing fraud, the transaction was most improper, and the appeal must be dismissed with costs.

May 5.—*In re Walker's Trust*—Appeal dismissed from Vice-Chancellor Knight Bruce with costs.

—5.—*In re Coles*—Order for payment of fund to petitioner on his recovery from lunacy.

—5, 8.—*In re Bristol Charities*—Stand over.

May 8.—*In re Oundle Brewery Company, ex parte Croxton*—Appeal from the Vice-Chancellor Knight Bruce dismissed.

— 8.—*In re North of England Joint-Stock Banking Company, ex parte Holme*—Part heard.

Lords Justices.

Lord James Stuart and others v. London and North Western Railway Company. April 19, 20, 1852.

RAILWAY COMPANY.—CLAIM FOR SPECIFIC PERFORMANCE OF CONTRACT TO PURCHASE LANDS.—ACTION AT LAW.

Held, reversing the decision of the Master of the Rolls, that the devisees in trust of a testator, with whom a railway company by their agent had contracted for the purchase of land through which a proposed branch line would pass on the consideration of his withdrawing his opposition to the passing of their bill authorising the construction of such line, were not entitled to claim the specific performance of the contract upon the company abandoning the line and not taking the land, but that an action must be brought at law to recover damages.

An appeal from the whole decree on a claim was allowed to be opened as upon an appeal from a decree in a cause, by the plaintiffs.

THIS was an appeal from the decision of the Master of the Rolls decreeing on a claim filed by the plaintiffs as devisees in trust under the will of the late Marquis of Bute, the specific performance by the defendants of a contract for the purchase of certain lands at Luton, through which a branch line of their railway passed. It appeared that, on the defendants applying for an act to authorise the construction of a branch railway from Watford to St. Albans, Luton, and Dunstable, their agent had by an agreement dated in April, 1847, contracted to purchase certain parts of the land of the Marquis through which their line was to pass, in consideration of his undertaking not to oppose the passing of their act. Upon the bill having passed, the defendants however abandoned the proposed line and refused accordingly to take the land. The Master of the Rolls having, on the authority of the decision of *Webb v. Direct London and Portsmouth Railway Company*, decided by Vice-Chancellor Turner, decreed the specific performance of the contract, this appeal was presented.

R. Palmer and M'Naghten for the plaintiffs; *Bethell, Willcock, and Speed* for the appellants, on the ground the case on which the decree had been made in the Court below had been overruled by the Lords Justices on March 22 last.

The Lords Justices said, that in accordance with their decision overruling the case cited for the respondents, the remedy of the landowner was not by a proceeding for specific performance, but by an action for damages at law. The appeal would therefore be allowed and an action at law have to be brought.

May 5.—*Westwood v. Southey* — Arrangement come to.

— 5.—*Sims v. Helling* — Appeal from the Master of the Rolls dismissed with costs.

— 5, 6, 7.—*Zulueta v. Vincent*—Appeal from the Master of the Rolls dismissed with costs.

— 7.—*In re Martyn, ex parte Martyn*—On appeal from Mr. Commissioner Goulburn, order for certificate of 2nd class.

— 8.—*Ex parte Glyn, in re Ashlin*—Reference back to the Commissioner.

— 8.—*Evans v. Norfolk Estuary Company* Injunction continued.

— 8.—*Hart v. Turk*—Appeal allowed from Vice-Chancellor Parker.

Master of the Rolls.

Littlewood v. Butterill. April 24, 1852.

CLAIM.—LEGATEE.—MISTAKE IN NAME.—NEPHEW.

A testator, by his will, gave inter alia a sum of money to his nephew, John L., of Sheffield, innkeeper. The testator's nephew (named John L.) was a milkman and cow-keeper, and died before the date of the will, leaving two sons, who were called nephews: John L. was a grinder, and Thomas L. an innkeeper: Held, that upon affidavit of service of the claim on John L., the claim of Thomas L. for payment of the legacy would be allowed.

Lloyd and H. Stevens appeared in support of this claim, for payment of a legacy under the will of John Butterill, of Dorchester, dated in December, 1850, whereby he gave inter alia a sum of 250*l.* to his "nephew, John Littlewood, of Sheffield, innkeeper." It appeared that there had been a nephew John Littlewood, who, however, was a milkman and cowkeeper, and had died in October, 1846, and that his two sons, John Littlewood was a grinder, and the plaintiff Thomas Littlewood an innkeeper. It also appeared that the testator knew of the death of his nephew, and it was alleged the great nephews were usually called nephews, *Smith v. Coney*, 6 Ves. 42, was cited.

The Master of the Rolls said, that the claim would be allowed upon an affidavit of its service on John Littlewood, who would, however, be heard on the question.

May 5.—*Whitehead v. Thompson* — Stand over to 2nd day of Trinity Term.

— 6.—*Kennington v. Houghton*—Exceptions to Master's report allowed as to time from which rent became payable, and disallowed as to compensation.

— 6.—*Brown v. Gordon*—Part heard.

— 6.—*Lake v. Eastern Counties Railway Company*—Defendant held liable to pay costs of conveyance of lands.

— 7.—*De Houst v. Boys*—Order by consent for sale of French stock, and investment of proceeds in English funds.

— 7.—*Wood v. Davies*—Petition refused.

— 8.—*Zulueta v. Vincent*—Motion refused to

set aside attachment on the ground of irregularity.

May 8.—*Fremlin v. Wildbore*—Ex parte injunction refused to stay execution.

— 8.—*In re Bolton Waterworks' Act*—Order as to costs of investment of money paid as compensation.

Vice-Chancellor Turner.

Goodchap v. Weaving and others. April 22, 1852.

OFFICIAL MANAGER OF COMPANY.—LEAVE TO RECEIVE ACCRUING RENTS AND TO ARRANGE AS TO REPAIRS.

Leave was given to the official manager of a land company to receive the rents, which would shortly accrue due, and for their payment into Court, without prejudice to any question in the cause, and for him to arrange with the parties as to the necessary repairs, or in the event of their disagreeing, proposals to be taken before the Master for such repairs.

THIS was a motion for the appointment of the plaintiff, who was the official manager of the National Land Company, as receiver of the rents, which would shortly become due, and for the preservation of the property in tenantable order.

Sir W. Page Wood and Romburgh, in support; Bagshawe for the defendants.

The Vice-Chancellor said, that the plaintiff could only be directed, without prejudice to any question in the cause, to receive and pay into Court the accruing rents, and to be at liberty to make such repairs as the parties might agree upon to be necessary, or in the event of their disagreeing, proposals to be taken in before the Master.

May 5.—*Hudleston v. Whelpdale*—Cur. ad. vult.

— 6.—*Worth v. Mackenzie*—Will held valid.

— 7.—*In re Powell's Estate*—Cur. ad. vult.

— 8.—*Scovell v. Cattley*—Stand over.

Vice-Chancellor Kindersley.

Webb v. Woods. April 26, 1852.

WILL.—CONSTRUCTION.—EFFECT OF REPUGNANT CLAUSE.

A testator gave all his property to his wife, her executors, administrators, or assigns, "to and for her and their own use and benefit, upon the fullest trust and confidence reposed in her, that she will dispose of the same for the joint benefit of herself and my children;" Held, that the wife was entitled to take for her own use and benefit, and that no trust was created for the children.

THE testator, Richard Webb, by his will gave all his property of whatsoever description, whether in possession, reversion, or expectancy, or which he might be possessed of at the time of his death, to his wife, her executors, administrators, or assignees, "to and for her and

their own use and benefit, upon the fullest trust and confidence reposed in her, that she will dispose of the same for the joint benefit of herself and my children," and he appointed his wife and the defendant, Mr. Edward Woods, executrix and executor of his will. A question arose as to the interest to which the wife was entitled under the will.

Shapter, Beavan, and Murray appeared for the respective parties.

The Vice-Chancellor, after taking time to consider, said, that had the will stopped at the words "use and benefit," there would have been no question as to its effect in giving an absolute gift to his wife, if alive, or her executors, if dead, and her assigns, if she assigned it. The latter clause, however, raised a trust expressly contradicting the former part of the will. The rule applicable was, that if there were two clauses of a sentence capable of two constructions, the construction which was in accordance with the other should be adopted. The contradictory effect would be produced if it were held that the latter part of the sentence created a trust for the children, and there must therefore be a declaration that the wife was entitled to the whole for her own use and benefit: referring to *Crockett v. Crockett*, 1 Hare, 451; 5 Hare, 326; 2 Phill. 553; *Woods v. Woods*, 1 My. & Cr. 401; *Cooper v. Thornton*, 3 Bro. C. C. 96, 186; *Robinson v. Tickell*, 8 Ves. 142.¹

May 5, 6.—*Collett v. Newman*—Part heard.

— 7.—*Egerton v. Earl Brownlow*—Order for confirmation of Master's report as to repairs to be effected by receiver.

— 7.—*Sweeting v. Sweeting*—Stand over.

— 7.—*Cockburn v. Raphael*—Order on petition as to purchase of building for charitable establishment, and as to payment of dividends of fund in Court.

— 7.—*St. Aubyn v. St. Aubyn*—Master's report confirmed.

— 8.—*Soltan v. De Held*—Last cause day of Trinity Term appointed to enter bill pro confesso.

— 8.—*In re Staffordshire and Shropshire Railway Company, ex parte Archibald*—Appeal allowed from the order of the Master directing payment of money admitted to be in appellant's possession, but who had parted therewith, to the official manager.

Vice-Chancellor Parker.

In re Midland Union, Burton-upon Trent, Ashby-de-la-Zouch, and Leicester Railway Company, ex parte Hill. April 16, 19, 1852.

WINDING-UP ACT.—PROVISIONAL AND MANAGING COMMITTEE-MAN.—LIABILITY OF ESTATE TO CONTRIBUTE TOWARDS EXPENSES.

¹ See also *Bushnell v. Parsons*, Prec. Ch. 218; *Curtis v. Rippon*, 5 Madd. 434; *Hammond v. Neame*, 1 Swanst. 35; *Morse v. Morse*, 2 Sim. 485.

The estate of N., a member of the provisional committee and also of the managing committee of a railway scheme, was held liable to contribute towards the expenses incurred in pursuance of orders given by the managing committee, although he might not be present at some of their meetings, on the ground that there was an implied contract between the members of such committee to contribute rateably towards such expenses, and the resolutions at one meeting being confirmed at subsequent ones. An appeal was therefore dismissed, with costs, from the decision of the Master placing the name of N.'s administratrix on the list of contributories.

THIS was an appeal from the decision of Master Finney placing the name of the appellant on the list of contributories to the above company as administratrix of John George Norbury, who was a member of the provisional committee and also of the managing committee, and who had attended several of the meetings of the latter committee at which orders were given; and although he was not present when an engineer was appointed to make the necessary surveys, he was present at a subsequent meeting at which that appointment was recognised and his report of the progress of his survey ordered to be entered on the minutes and to be advertised. The company's solicitor, Mr. Baxter, having, on an action being brought by the engineer, compromised it with the sanction of the provisional directors for 1,300*l.*, it was contended Mr. Norbury's estate was liable to contribute to the discharge of Mr. Baxter's claim in respect of such payment.

Hobhouse in support of the appeal; Roxburgh, for the official manager, contra.

Cur. ad. vult.

The Vice-Chancellor, after referring to the facts of the case, said, *prima facie* the amount due to the engineer or whatever had been paid in discharge thereof, subject to investigation as to the propriety of such payment, was a debt or liability of the company. And although it might be that Mr. Norbury was not actually a party to the order being given, yet it must be implied that as among the committee of management an agreement existed for all to contribute rateably towards the expenses incurred under orders given or sanctioned by the members who happened to be present, inasmuch as the resolutions at one meeting were confirmed at a subsequent one. The decision of the Master placing the appellant's name on the list of contributories must therefore be affirmed with costs.

May 5.—*Hume v. Bentley*—Decree for specific performance of contract, with costs.

— 5.—*Thistlethwaite v. Garnier*—Judgment on special case.

— 5.—*Fitch v. Prior*—Injunction granted.

— 6.—*Coomer v. Bromley*—Bill dismissed with costs.

May 7, 8, 10.—*Lumley v. Wagner*—Injunction continued.

Court of Queen's Bench.

Castelli and others v. Rue. May 5, 1852.

COMMISSION TO EXAMINE PLAINTIFFS ABROAD.—PROOF OF DISABILITY TO BE PRESENT AT THE TRIAL.

Held, discharging a rule nisi which had been obtained, that a commission to examine plaintiffs abroad will not be granted without proof of the impossibility of the parties coming to this country.

THIS was a rule nisi obtained on April 16 last, for a commission to be issued to Constantinople and Leghorn, to examine the plaintiffs, who respectively resided in these cities, in this case, which raised a question as to the sufficiency of a petitioning creditor's debt and an act of bankruptcy. The rule had been obtained on an appeal from Mr. Justice Crompton, who refused to make the order at Chambers.

Bramwell showed cause; *Willes* in support.

The Court said, that as there was no proof of the impossibility of the parties coming to this country, the rule must be discharged. As otherwise, a party fearing a cross-examination would only have to go abroad and obtain a commission.

May 5.—*Ex parte Macnamara*—Rule discharged for *cartorari* to bring up conviction to be quashed.

— 5.—*Regina v. Lancashire and Yorkshire Railway Company*—Rule absolute for mandamus on defendants to construct branch railway.

— 6.—*Regina v. Major*—Sentence on indictment for perjury.

— 6.—*Lowndes v. Earl of Stamford and Warrington*—Judgment for plaintiff on demurrer to second count of declaration, and for defendant on the first.

— 6.—*Regina v. South Wales Railway Company*—Rule nisi for mandamus on defendants to construct branch line.

— 7.—*Regina v. Clerk of Surrey County Court of Southwark*—Rule absolute for mandamus on defendant to issue execution to levy costs, unless execution issued as prayed.

— 7.—*Lewis v. Nicholson and another*—Rule discharged to set aside nonsuit.

— 7.—*Bishop v. Hatch*—Rule discharged for entry of satisfaction on judgment roll.

— 8.—*House v. Barber*—*Cur. ad. vult.*

— 8.—*Regina v. Francis*—Rule absolute for *quo warranto*.

— 8.—*Regina v. —*—Rule nisi for *habeas corpus*.

— 8.—*Meyer v. Thornton*—Rule absolute for commission to examine witnesses at San Francisco.

— 8.—*Keane v. Stuart*—Rule absolute for allowance of set-off against amount of verdict.

— 10.—*Morvall v. Great Northern Railway*

Company—Appeal allowed, from County Court, with costs.

May 10.—*Olding v. Smith*—Judgment reversed on appeal from County Court.

—10.—*Coope v. Steenson*—Judgment for appellant from County Court, with costs.

Queen's Bench Practice Court.

May 5.—*Earle v. Dowling*—Rule for new trial discharged.

—5.—*Crawshaw v. York and North Midland Railway Company*—Rule refused.

—5.—*Regina v. Justices of Maidstone*—Rule nisi under 11 & 12 Vict. c. 44, for defendants to issue warrant to enforce payment of highway-rate.

—6.—*Ex parte Haylock*—Order for discharge of prisoner on *habeas corpus*.

—6.—*Taylor v. Warrington*—*Cur. ad. vult.*

—6.—*Regina v. Recorder of Leeds*—Rule absolute for mandamus on defendants to enter continuances and hear appeal against orders in *bastardy*.

—7.—*Regina v. Great Northern Railway Company*—Rule nisi for mandamus to complete railway.

—7.—*Regina v. Justices of Oxfordshire*—Rule nisi for *certiorari*.

—7.—*Wilde v. Sheridan*—Rule absolute for writ of prohibition to Judge of Norfolk County Court against proceeding herein.

—7.—*In re* ———. — *Certiorari* to remove indictment into this Court against attorney.

—8.—*Regina v. Hereford, Newport, and Abergavenny Railway Company*—Rule nisi for mandamus on defendants to complete railway.

—8.—*Regina v. Saville*—Rule nisi for payment of costs of criminal information.

—8.—*Regina v. Inhabitants of Hillingden*—Rule nisi for mandamus on defendants to proceed to election of surveyor of highways.

—8.—*Regina v. Commissioners of Land Tax*—Rule nisi for mandamus on defendants for equal assessment within division of the Tower Hamlets.

—8.—*Ex parte Bailey*—Rule refused for *certiorari* to remove inquisition into this Court to be quashed.

Common Pleas.

In re Connell. April 16, 1852.

PAUPER INFANT.—HABEAS CORPUS.—EVIDENCE.

The guardians of a parish having placed an infant pauper at an establishment had, upon an application made in February to them by the pauper's sister, declined to comply with her request for her removal to a Catholic orphan asylum, her parents being of that religion: Held, that a writ of *habeas corpus* would not be granted, unless it were shown that the child was detained against her will at the time of moving for the writ, and also that the guardians had done something to require the issue of the writ.

This was an application for a writ of *habeas corpus* to bring up the body of Joanna Connell, of the age of four years, a pauper in the Lambeth Infant Establishment at Norwood. It appeared that the application was made at the instance of her sister, and on the ground that the pauper was detained against her will, and that she was desirous that the child should be brought up and instructed in the Roman Catholic religion, which was that of her parents. An application to the guardians of the poor of the parish of St. Mary, Lambeth, for her removal to a Catholic orphan asylum, having been refused on 11th February last, this writ was moved for.

Scott in support.

The Court said, there was nothing to show that the guardians had done anything to require the writ to issue, or that the child was detained against her will, as the application to the board had been made in February and the child might have since altered her mind, and although it was not necessary to construe affidavits of this kind very strictly, yet some sufficient grounds must be given for granting the application. The rule was therefore refused.

May 5.—*In re Hakewell*—Writ of *habeas corpus* discharged.

—6.—*Myers v. Perigal and others*—Judgment on special case from the Lord Chancellor as to construction of will.

—6.—*Costins v. Evans*—Rule absolute for new trial.

—5, 6, 7.—*Messer v. Parker*—*Stet processus*.

—7.—*Graham and others, assignees, v. Chapman*—Rule absolute to enter verdict for plaintiffs.

—7.—*Novello v. Sudlow*—On special case, judgment for the plaintiff.

—8.—*Dod v. Lunley*—Distringas to compel appearance.

—8.—*Foster v. Crabb*—On demurrer to replication, judgment for defendant, but leave to amend on payment of costs.

—8.—*Austin v. Manchester, Sheffield, and Lincolnshire Railway Company*—Rule absolute in arrest of judgment.

—8.—*Windle v. Davis*—Rule absolute for new trial.

—11.—*Webster v. Kelly*—On appeal from County Court, judgment reversed.

—11.—*Cuthbertson v. Parsons*—Judgment for appellant, with costs.

—11.—*Goodman v. Great Western Railway Company*—Appeal dismissed, with costs.

Court of Exchequer.

Garvey v. Harris. April 27, 1852.

COUNTY COURTS' EXTENSION ACT.—VERDICT IN ACTION OF TORT FOR 5*l.*—CERTIFICATE FOR COSTS.

A plaintiff in an action of trespass which was brought in the Superior Court, recovered a verdict for 5*l.*, and the presiding Judge certified for his costs under the 13 & 14

Vict. c. 61, s. 12: Held, *refusing a rule to rescind that certificate, that the plaintiff was entitled to his costs.*

THIS was motion for a rule nisi to rescind the certificate given by the Judge on the trial of this action for trespass, and in which 5*l.* damages were recovered, for the allowance of the plaintiff's costs under the 13 & 14 *Vict. c. 61, s. 12.*¹

Collier in support, on the ground that the plaintiff had not recovered a sum less than 5*l.*, referring to section 11, which enacts, that "if in any action commenced after the passing of this act in any of her Majesty's Superior Courts of Record, in trespass, trover, or case, not being an action for malicious prosecution," &c., "the plaintiff shall recover a sum not exceeding 5*l.*, the plaintiff shall have judgment to recover such sum only, and no costs, except in the cases hereinafter provided, and except in the case of a judgment by default."

The Court said, that the act ought to be read so as to avoid inconsistency, absurdity, or repugnance to the evident meaning of the legislature, and that therefore, as it was clear this was a case in which it was intended to give power to a judge to certify, the rule must be refused.

May 5.—*Dawson v. Dutchelet and another*—Rule nisi for attachment against governor of prison for refusing to allow service of process on prisoner.

—5.—*Lythe v. Ault and another*—Rule refused to enter verdict for plaintiff *non obstante veredicto*.

—5.—*Bell v. Horney*—Rule discharged to reduce damages.

—6.—*Brandus v. Lumley*—Rule nisi for distringas to compel appearance.

—6.—*Gibbs and another v. Fremont*—Application for leave to inspect documents, &c., referred back to Mr. Baron Alderson.

—7.—*Hicky and another v. Salomon and another*—*Cur. ad. vult.*

—8.—*Dwyer v. Collins*—Rule discharged to enter verdict for plaintiff on the ground of the improper reception of evidence.

—8.—*Meggison v. Lady Glamis*—Rule absolute to enter verdict for defendant.

¹ Which provides, that "if the plaintiff shall in any such action as aforesaid recover a sum less than the sum in that behalf hereinbefore mentioned, by verdict, and the Judge or other presiding officer before whom such verdict shall be obtained, shall certify on the back of the record that it appeared to him at the trial that the cause of action was one for which a plaint could not have been entered in any such County Court as aforesaid, or that it appeared to him at the trial that there was a sufficient reason for bringing the said action in the Court in which the said action was brought, the plaintiff in such case shall have the same judgment to recover his costs that he would have had if this act had not been passed."

May 8.—*Carr v. Lancashire and Yorkshire Railway Company*—Rule absolute in arrest of judgment.

Court of Exchequer Chamber.

Regina v. Baldry. April 24, 1852.

INDICTMENT. — ADMISSIBILITY IN EVIDENCE OF CONFESSION. — SUFFICIENCY OF CAUTION.

On the apprehension of a prisoner charged with administering poison to his wife with intent to murder her, it appeared that the constable had said,—"You need not say anything to criminate yourself; but what you do say will be taken down, and used as evidence against you." Held, that this was a sufficient caution under the 11 & 12 *Vict. c. 42, s. 18*, and that a confession given after receiving that caution was admissible on the trial of the indictment, and a conviction thereupon was accordingly affirmed.

THIS was an indictment against the prisoner for administering poison to his wife with intent to murder her, and on the trial before Lord Campbell, C. J., at the last Suffolk Assizes, the evidence of a police constable was admitted, which went to establish a confession by the prisoner of his guilt. It appeared that the constable had said to the prisoner,—"You need not say anything to criminate yourself; what you do say will be taken down, and used as evidence against you." The prisoner having been found guilty and sentenced to death, the question was reserved whether this was a sufficient caution, so as to render the evidence admissible, under the 11 & 12 *Vict. c. 42, s. 18*, whereby it is enacted that the caution to be given by the justice or justices, after the depositions taken have been read to the accused, is to be in these words, or words to the like effect:—"Having heard the evidence, do you wish to say anything in answer to the charge? You are not obliged to say anything unless you desire to do so, but whatever you say will be taken down in writing, and may be given in evidence against you upon your trial."

Mills for the prisoner; *Power*, in support of the conviction was not called on.

The Court (per Lord Campbell, C. J., Pollock, L. C. B., Erle, J., Parke, B., and Talford, Williams, and Crompton, JJ.) held that the caution was sufficient, and that the evidence had therefore been properly received, and the conviction was accordingly confirmed.

May 10.—*Grantham Canal Company v. Amburgate, Nottingham, and Boston and Eastern Junction Railway Company*—Judgment of Court of Queen's Bench reversed.

—10.—*McGregor v. Official Manager of Dover and Deal Railway Company*—Stand over.

—11.—*Robinson v. Marquis of Bristol*—Judgment of the Court of Common Pleas reversed.

—11.—*Heath v. Unwin*—*Cur. ad. vult.*

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SATURDAY, MAY 22, 1852.  
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LAW OF EVIDENCE AMENDMENT ACT.

COMPETENCE OF HUSBAND OR WIFE.

THE question so hotly disputed when the Act, 14 & 15 Vict. c. 99, first came into operation, namely, whether husband and wife were competent witnesses for each other, or compellable to give evidence against each other in civil cases, may now be considered as finally determined, the Courts of Law having adopted a construction of the Act in conformity with the acknowledged intentions of the House of Peers, by which the clause was deliberately struck out, rendering husband and wife competent witnesses.

In one of the first cases tried at Nisi Prius under the act, Mr. Justice Erle ruled, that the wife of one of the litigant parties was a competent witness on behalf of her husband,¹ and the learned Judge, although he stands alone in the opinion, still adheres to it, having stated in a very late case, that he conceived "the union of interest between them was the ground of incapacity as regards husband and wife, and that upon the restoration of capacity to one the other was also rendered admissible." The other Judges, however, seem by their judgments to put the ground of incapacity on a totally different footing,—namely, the necessity of preserving the confidence and happiness of domestic life. This, at all events, appears to be consistent with Lord Hardwicke's ideas on the same subject. In a case of *Barker v. Dizie*,² where the defendant was willing that the plaintiff's wife should be examined, Lord Hardwicke said:—"The reason why the Law will not suffer a wife

to be a witness for or against her husband is, to preserve the peace of families, and therefore I shall never encourage such consent."

Very soon after the case above adverted to was tried before Justice Erle, in which the wife was admitted as a witness, the same question was raised before Chief Justice Wilde,³ and that learned Judge unhesitatingly held, that husband and wife remained incompetent after the passing of the Act 14 & 15 Vict. c. 99, as they had previously done, unless where they were admissible as parties to the record.

In *Barbat v. Allen*,⁴ the question was formally brought under the consideration of the Court of Exchequer, sitting in Banco, and the Judges of that Court were unanimously of opinion that the late statute did not render husband or wife competent witnesses for or against each other in civil proceedings.

Still more recently,⁵ the point was again discussed in the Court of Queen's Bench, when that Court (Justice Erle only dissenting) concurred in the decision of the Court of Exchequer in *Barbat v. Allen*, and held that, upon the true construction of the act, husband and wife were inadmissible as witnesses, unless in cases where they were parties to the record. Lord Campbell indeed, although giving effect to the only construction which as he considered the Court was justified in putting upon the act, expressed his regret that the Legislature had restricted the admissibility of persons between whom the conjugal relation existed, and intimated a tolerably strong opinion, that the testimony of married persons

¹ *Harrison v. Dusa*, discussed and questioned. vol. 43, p. 38.

² Cas. Tem. Lord Hardwicke, 264.

VOL. XLIV. No. 1,263.

³ In a case of *Verroux v. Casey*, 16 Law T. 429.

⁴ Reported 16 Jurist, p. 339.

⁵ In a case of *Stapleton v. Craft*, argued 26th April, 1852.

should only be excluded in criminal cases, or where their knowledge was *founded on confidential communications*. It appears to us that great difficulty would have arisen if Courts of Justice were called upon to determine what communications between man and wife, which may afterwards become the subject of evidence, should be classed as *confidential*. With all due deference to the Lord Chief Justice, the Legislature appears to have adopted the wiser and safer course, in excluding the evidence of persons between whom the relation exists, in all civil and criminal cases; and it is to be regretted that the intention was not fully carried out, by providing that when husband and wife are necessarily parties to the record, they should not be competent or compellable to give evidence.

A new question has arisen under the late Act, in a *Nisi Prius* trial,⁶ where the plaintiff suing as a pauper, conducted his case in person, and also proposed to give evidence on his own behalf. Lord Campbell, properly, as we conceive, held, that although the late act rendered the party admissible as a witness, he could not be allowed to act as advocate and witness also, without introducing a practice that would be manifestly objectionable and unsafe for the administration of Justice. This point will probably be discussed before the full Court, during the Term which commences this day.

ARRAIGNMENT OF LUNATIC OFFENDERS.

CASE BEFORE MR. BARON PLATT.

We are not amongst those who contend for the demi-deism of Judges of any grade, and deem it a salutary licence which enables public opinion to make itself heard and felt through the columns of a newspaper, when legal functionaries neglect their duty or demean themselves in such a manner as justly to call for animadversion. On the other hand, it is to be regretted when this licence is abused, as it assuredly is, when a journal of the largest circulation and with proportionate influence, assails, as *The Times* has recently done, a Judge whose only offence was, that in superintending the administration of the Criminal Law, he acted in strict conformity with its provisions, and humanely acceded to the suggestion of the counsel for the Crown, *con-*

that a painful proceeding should not be uselessly and unnecessarily prolonged.

The facts which are supposed to have afforded an excuse for the attack made upon Baron Platt in *The Times* were simply as follow:—A man of mature age, named Thomas Cathie Wheeler, who had been unmistakably insane for several years, and was discharged uncured from Bedlam in 1849, and again from the Surrey County Lunatic Asylum, after a year's residence, in 1851, was indicted at the last Sessions of the Central Criminal Court for the wilful murder of his aged mother, with whom he had lately lived and by whom he was supported. The Grand Jury, as they were bound to do, in order to justify subsequent proceedings, found a true bill against the lunatic, and upon his being placed in the dock for the purpose of being arraigned, the counsel for the prosecution intimated to the presiding Judge, that there was good reason to believe the criminal was in such a state of mind as to render him wholly incapable of understanding the effect of pleading to the indictment, and although the lunatic wildly shouted out "Not Guilty," his own counsel confirmed the representation of the counsel for the Crown, and stated that he was prepared with evidence to satisfy the jury that the prisoner was decidedly insane. The appearance of the prisoner was such as would have made it necessary to produce very strong evidence to show that he was not insane. Now, under these circumstances, the Common Law of England, as it appears to us, humanely provides, that if it be doubtful whether a criminal, who at his trial is in appearance a lunatic, be such in truth or not, the fact shall be investigated.¹ Persons charged with crime are frequently found in the course of their trials to suggest something material, in proof of their own innocence, and as a madman cannot be supposed to enter upon his defence with due advice or caution, the law says that he ought not to be put on trial, but that the jury charged to try the indictment against him should first try the fact, whether he is at the moment of unsound mind and incapable of pleading. The Statute Law² provides, for the disposal of persons who shall be found insane upon arraignment by the following provision:—

"That if any person indicted for any offence shall be insane and shall upon arraignment be

¹ 1 Hawk. P. C., c. 1, s. 4, Russell by Greaves, Book 1, p. 14.

² 39 & 40 Geo. 3, c. 94, s. 2.

⁶ *Cobbett v. Hudson*, Guildhall, May 15.

found so to be by a jury lawfully empanelled for that purpose, so that such person cannot be tried upon such indictment, or if upon the trial of any person so indicted, such person shall appear to the jury charged with such indictment to be insane, it shall be lawful for the Court before whom any such person shall be brought to be arraigned or tried as aforesaid, to direct such finding to be recorded, and thereupon to order such person to be kept in strict custody till his Majesty's pleasure shall be known."

Such being the law, Baron Platt pursued it in the case of Wheeler to the letter. The jury was empanelled to try whether the prisoner was insane and incapable of pleading. The Surgeon of Horsemonger Lane Gaol, where the prisoner was confined since the perpetration of the offence early in the month of April, deposed that he attended the prisoner, conversed with him daily, and had no doubt he was insane. The uncle of the prisoner, who also stood in the relation of brother to the murdered mother, stated that the prisoner was decidedly insane for five years, and that on the morning of the day when the murder was committed, the propriety of sending the prisoner again to a lunatic asylum had been pressed upon the deceased. An indifferent person, only known to the prisoner by lodging in the same house, deposed to some striking evidences of unsoundness in the prisoner's conduct, as, for example, addressing a door in a lengthened conversation as if he was addressing a living and a rational being; and Mr. Cope, the Governor of Newgate, brought down the evidence of insanity to the moment of arraignment, by declaring, on oath, that he had observed and spoken to the prisoner on many occasions since his committal to Newgate, and that he was satisfied, he was not only of unsound mind, but wholly unable to understand the meaning or effect of pleading, and upon the united testimony of those witnesses, the learned Judge thought it unnecessary to call for further evidence, and the jury, without hesitation, found that the prisoner was of unsound mind and unable to plead. This finding of the jury was thereupon recorded, and the prisoner was ordered, pursuant to the statute, "to be kept in strict custody until her Majesty's pleasure shall be known."

Now, if the law were ever so objectionable, it can hardly be imputed as a fault to a Judge intrusted with its administration, that he has acted according to its letter and spirit. In this instance the letter and spirit of the law appear to be consistent with

reason, humanity, and justice. If a person indicted for any offence, who is insane when arraigned, may be called upon to plead, he may plead "Guilty," and what a monstrous violation of justice it would be if such a plea, pleaded under such circumstances, should subject a prisoner to capital or to any punishment. Here the prisoner, who according to the assertion of his own legal advisers is not in a fit state of mind to take his trial, is committed to safe custody until that time arrives—if it ever should—when it pleases the Hand that has afflicted to restore him to sanity, and he may then be tried as he would now if he had been sane, and the question would probably be, if he was sane or insane when he committed the horrible offence with which he stands charged? To suppose that the course pursued involves the infliction of any needless hardship on the prisoner is altogether fallacious. The trial is postponed, because it cannot be entered upon with the ordinary securities that the ends of justice will be attained, and the public is protected from the consequences of a verdict of "Not Guilty," arising from what might turn out to be circumstances of temporary disability to answer the charge.

We are inclined to agree with the general observation of the writer in *The Times*, that too much attention is given, in the administration of both civil and criminal Justice, to offences against property, as compared with offences against life, liberty, person, and character. For this, however, neither the Common Law nor the Judges are to blame. In the instance directly under consideration, if the prisoner had been indicted for any offence involving the loss of property, the course prescribed by law would have been precisely similar to that adopted in Wheeler's case. The section above cited extends to all offences whether amounting to felony, or only to misdemeanour.

Newspaper attacks are often, it may be supposed, penned without deliberation or adequate means of information, and the writers are entitled to a certain degree of indulgence, but when the effect is to shake the public confidence in the law, and to throw discredit on the administration of justice, the mischievous character of such unfounded attacks requires to be exposed. In the case under discussion, our readers will be able to determine whether any blame justly attaches to a Judge who has been so bitterly assailed. Our contemporary can scarcely hope to succeed in persuading the public that Judge,

counsel for the prosecution, and the prisoner respectively, surgeons, gaolers, relatives, and strangers, all joined in a conspiracy to delude the jury into the belief that the prisoner was mad,—a conclusion which—we dare to say—the jury would have come to from the demeanour of the prisoner, if no evidence had been taken.

LAW OF ATTORNEYS.

TAXATION OF BILL.—CLASSES OF ITEMS STRUCK OUT.—COSTS OF TAXATION.

In *Ex parte Clark*, just reported in 13 Beavan, 173, certain items were struck out of a solicitor's bill, on taxation, for business done for another person, on the alleged retainer of the client, and it was decided that in determining whether the solicitor or client should pay the costs of taxation, the items so struck out must be taken into account.

The case involved other points, regarding the insufficiency of the evidence adduced to charge the client with the costs incurred for another party, and for which costs the client was alleged to be responsible; and the want of clear and distinct accounts, in the matters in question, formed part of the ground of decision against the solicitor. For our present purpose we shall advert only to that part of the judgment of the Master of the Rolls which bears on the rule now laid down that items wholly struck out of a solicitor's bill are included in the question of the costs of taxation.

Before deciding the point, the Master of the Rolls desired the opinion of the Taxing Masters on the case, which was stated in the following terms:—

"An attorney prosecuted an action of replevin in the name of *H. J.*, alleging that *C. B.* engaged to pay, and admitted that she was liable to pay, the costs of the action. The attorney delivered his bill to, and demanded payment of, *J. B.*, the administrator of *C. B.*

"The charges in the action of replevin formed part only of a large bill.

"On a reference for taxation of the whole bill, the Master struck out, or taxed off, the whole series of charges relating to the action of replevin; and the bill being thereby reduced more than a sixth, the Master taxed the costs of taxation, and charged the amount to the attorney."

The cases cited in the argument were *White v. Milner*, 2 Hen. Bl. 337; *Rigby v. Edwards*, Beames on Costs, Appendix, No. 24, (1st edit.); and 5 Madd. 20; *Wills v. Bennett*, 3 New. & Mann. 767;

Morris v. Parkinson, 3 Dowl. Prac. Ca. 744; *Newton v. Harland*, 9 Dowl. Prac. Ca., p. 643.

The Taxing Masters certified, that in the case stated the costs of the taxation were properly payable by the solicitor, and they gave the following reasons for their opinion:—

"Before the passing of the Attorneys and Solicitors' Act, (6 & 7 Vict. c. 73,) there had been an understanding in the Profession, founded on the cases of *Rigby v. Edwards*, *Pyeches v. Bennett*, Beames on Costs, p. 257, (2nd edit.,) and on the several cases in the Courts of Law, that if a solicitor introduced charges into his bill on his client, which were not properly chargeable against that client, but were properly chargeable against some one else, the charges were to be struck out of the bill altogether, and not taxed off, and that the amount of such charges was not to be taken into consideration, in awarding the costs of the taxation. The understanding seems to have been, that the disallowance of such items was not 'taxation,' and that the act gave the costs of taxation only; but we are unable to state that there existed any well-defined or consistent practice on the subject; nor are we aware that it was ever brought under judicial consideration in this Court since the cases above mentioned.

"But, since the present Act came into operation, it has been considered that the distinction between items to be struck out and items to be taxed off no longer exists. The new Act, instead of reserving the costs of taxation for the subsequent order of the Court, directs them to be taxed and paid at once according to the event, and not merely the costs of the 'taxation,' as provided in the repealed Act of 2 Geo. 2, c. 23, but the costs of the 'reference.'

"The words of the Act and of the common orders thereon, are express, that if the bill, when taxed, be more or less by one-sixth than when delivered, the solicitor or client, as the case may be, is to pay the costs of the 'reference;' and as a bill, if one-sixth part of it be disallowed, is equally within the express words of the statute, and is equally less by one-sixth, as taxed, than it was when delivered, whether such one-sixth be deducted or struck out; and as, in such case, the solicitor is to pay the costs of the reference, the question of striking out or taxing off has become a mere arrangement of figures, without any practical effect, while the provision that the taxing officer is to have power to make a special report relating to the bill and taxation, was considered to have been introduced for the purpose of enabling either party to obtain relief, if the justice of the case should require the strict rule laid down in the former provision of the act to be departed from.

"Since the passing of the present Act, therefore, the practice in the Taxing Masters' Offices has been uniform, not to strike anything out of

the bill, but to tax off all items disallowed, and to include the amount of all such disallowed items in the computation, for the purpose of awarding the costs of the reference, subject, however, to making a special report, if the circumstances of the case should render it proper so to do."

This certificate was signed by all the Taxing Masters, and thereupon the late Master of the Rolls, Lord Langdale, said,—

"The point here raised is of some importance upon the construction of the Solicitors' Act.

"The Master disallowed, as I think properly, all the items charged for the costs of the action of replevin. The petition says, that these items were not reduced by taxation, but struck out; and being struck out, it is argued, that upon the stat. 2 G. 2, c. 23, and the case of *White v. Milner*, 2 Hen. Bl. 357, the amount of the costs of the action of replevin, even if properly disallowed, ought not to be computed in ascertaining the reduction of the bill, for the purpose of charging the solicitor with the costs of taxation. I have considered this question, and have been informed by the Taxing Masters, that since the present Act came into operation, it has been considered that the distinction between items to be struck out, and items to be taxed off no longer exists.

"In this opinion I entirely concur; and, on the whole, I am of opinion, that the petitioner has not made out any title to relief, and that this petition must be dismissed with costs."

NISI PRIUS OFFICERS' AND JUDGES' CLERKS' BILL.

THE Attorney-General has recently brought in a Bill to make provision for a permanent establishment of officers to perform the duties at Nisi Prius in the Superior Courts of Common Law and at the Judges' Chambers, and for the payment of such officers by salaries, and to abolish certain offices in these Courts.

These officers are now paid by fees, and which fees, the preamble recites, it is expedient to diminish.

The following is the substance of the clauses of the Bill:—

1. The Marshal and Clerk at Nisi Prius in the Court of Queen's Bench, and Marshal in the Court of Common Pleas and Exchequer to be abolished, and their duties to be performed by the Associates respectively.

2. Records, books, and papers to be transferred to the Associate.

3. The Lord Chief Justice or the Lord Chief Baron of the Courts respectively, are to appoint fit and proper persons on future vacancies in the office of Associate.¹

4. Clerks, not exceeding two, to be appointed by the Associates, subject to the approval of the Lord Chief Justice or Lord Chief Baron of the Courts respectively.

5. Offices to be provided for the Associates in the offices of the Courts, or their vicinity.

6. In case of sickness or other reasonable cause, the duties of the Associates may be performed by deputy.

7. The salaries of the Marshals of the Judges are to be of fixed amount.

8. Three clerks are to be appointed by each of the Lord Chief Justices and Chief Baron, one of whom is to act as crier on the Circuit and in London and Middlesex. And the other Justices and Barons are each to appoint two clerks, one of whom is to be the crier on Circuit and in London and Middlesex.

9. The present officers are to be re-appointed and to hold their offices during good behaviour, subject to dismissal by the Judges for misconduct.

10. A table of fees to be prepared.

11. The officers and clerks not to act as barristers, attorneys, or agents.

12. The salaries of the officers to be of fixed amount.

13. The salaries to be paid out of the fees received, and the surplus to be paid to the Consolidated Fund.

14. The officers to render accounts of fees received to the Treasury.

15. Allowance to officers and clerks on their retirement from office.

16. Usher and subordinate officers, and their deputies, to render accounts of fees to Treasury.

17. The fees of such subordinate officers may be abolished.

18. The number of subordinate officers to be fixed by the Treasury, with the sanction of the Lord Chief Justice and Lord Chief Baron.

19. The subordinate officers to be appointed by the Lord Chief Justice and Lord Chief Baron respectively.

20. Power to increase or reduce the number of such subordinate officers.

21. The salaries of the subordinate officers to be fixed by the Treasury, with the sanction of the Lord Chief Justice and Lord Chief Baron, and to be paid out of the Consolidated Fund.

22. Compensation to Hereditary Chief Proclamator and Hereditary Chief Usher.

23. Compensation to officers appointed by Hereditary Chief Proclamator or Hereditary Chief Usher, and to subordinate officers.

24. Appointments to be made without pecuniary consideration.

25. Officers and clerks not to receive gratuities on pain of dismissal.

¹ The qualification of the officer is not specified, whether barrister or attorney.

26. No compensation to be allowed for loss of right of appointment.

27. Judges fees on Circuit abolished.

Schedule (A.) specifies the officers and clerks of the Judges in the Superior Courts to be re-appointed, viz.—

Associate in the Court of Queen's Bench.

Associate in the Court of Common Pleas.

Associate in the Court of Exchequer.

Principal Clerk to the Lord Chief Justice of the Court of Queen's Bench.

Chamber clerk.

Principal clerk to Lord Chief Justice of the Common Pleas.

Chamber clerk.

Principal clerk to the Lord Chief Baron.

Chamber clerk.

Principal clerk of each of the other Justices and Barons.

Schedule (B.) is to contain the salaries of the officers and clerks, but the amounts are not yet specified.

COURT OF CHANCERY.

ORDER OF COURT, MAY 7, 1852.—INVESTMENTS UNDER TRUSTEES RELIEF ACT.

The Right Honourable Edward Burtenshaw Lord St. Leonards, Lord High Chancellor of Great Britain, with the assistance of the Right Honourable Sir John Romilly, Knight, Master of the Rolls, doth hereby, in pursuance of an Act of Parliament passed in the 10th and 11th year of the reign of her present Majesty, intitled "An Act for better securing Trust Funds, and for the relief of Trustees," and in pursuance and execution of all other powers enabling him in that behalf, order and direct in manner following, that is to say:—

Where any trustee, desiring to pay money or transfer stock or securities into the name of the Accountant-General of the Court of Chancery, under the said Act is, under a General Order of the said Court, dated the 10th day of June, 1848, directed to file an affidavit, intituled in the matter of the Act and the trust, setting forth certain matters and things in the said Order of Court specified and declared, in future such affidavit in every case *where the parties deem it necessary to have the money, or the dividends, or interest of stock or securities invested in the meantime, shall further contain a statement to that effect; and if the affidavit shall contain no such statement, the Accountant-General shall be at liberty to invest, as soon as conveniently may be, the said cash in Bank 3l. per cent. Annuities, in the matter of the particular trust; or in cases of dividends or interest on stock or securities transferred, such dividends or interest in the like stock, and all accumulations of the dividends of the stock in which such cash shall be invested, and of the dividends or interest on such stock or securities as aforesaid, from time to time in the like matter, without any special order, made by the Court in that behalf, and without any formal request for that purpose: and the Accountant-*

General is to declare the trust thereof who^m purchased subject to the Order of this Court—And for the purposes aforesaid the Accountant-General is to draw on the bank, according to the form prescribed by the Act of Parliament and the General Rules and Orders of this Court in that case made and provided.

Provided always, that if at any time a request in writing, by or on behalf of any party claiming to be entitled, that such investment be discontinued, shall be left with the Accountant-General, he shall be at liberty to cease making any further investment in the particular trust until the Court shall have made some order in that behalf.

(Signed)

ST. LEONARDS, C.
JOHN ROMILLY, M. R.

CERTIFICATE DUTY REPEAL.

MOTION TO BRING IN THE BILL.

ON Tuesday next, the 25th instant, Lord Robert Grosvenor will move for leave to bring in a Bill to Repeal the Annual Certificate Duty on Attorneys, Solicitors, Proctors, and Notaries.

There are the strongest reasons to expect a favourable decision at this stage of the measure, and that the principle of the Bill, —the undoubted justice of the claim for an entire remission of the Tax,—will be affirmed on both sides of the House by a large majority.

It is evidently of great importance, that as full an attendance of the Members as possible should be obtained. We believe that the Solicitors throughout the country, and our brethren in Ireland and Scotland, have used their best endeavours to induce their representatives to attend the House on the 25th, "in order that they may take such course as *the justice of the case may appear to require.*" The Practitioners in London should also exert themselves to secure the attendance of the Members for the Metropolitan Cities and Boroughs.

It cannot be considered as an improper interference with the independence of our representatives, to ask thus much at their hands. The Petitioners for the repeal of the Impost entertain a strong feeling that they are subjected to an unjust and exclusive burthen, to which no other Profession is liable, and they appeal to the sense of justice of Parliament to relieve them.

After five several Divisions in the last two Sessions in favour of the repeal, and considering that a large surplus will remain in the Treasury, they cannot be considered as unreasonable in again pressing the subject on the consideration of the Legislature.

PARLIAMENTARY RETURNS.

SALARIES AND COMPENSATIONS IN CHANCERY.

Moved by Mr. Aglionby.

	£	s.	d.
1. The total sum paid for salaries and office expenses, under the Act 5 & 6 Vict. c. 103, in the Court of Chancery, since the passing of the Act, up to the 25th day of Nov., 1851, (including 62,874 <i>l.</i> 1 <i>s.</i> 9 <i>d.</i> paid to stationers for copying, &c.) amounts to .	294,901	11	6
The total sum paid for compensation for loss of offices and profits to officers, under the same Act, since the passing thereof, up to the 25th day of Nov., 1851, amounts to .	364,355	18	8
	£659,257	10	2
2. The total sums paid to the late Sworn Clerks appointed Taxing Masters, for salaries .	64,108	13	8
And compensation, under the same Act, since the passing thereof, up to the 25th day of Nov., 1851 .	172,187	17	7

REDUCTION OF FEES IN CHANCERY.

Moved by Mr. Secretary Walpole.

The following are the Orders of Court for the reduction of fees made since the passing of the 5 & 6 Vict. c. 103, and the estimated amount of such reductions from the date of the Orders respectively to Nov., 1851 :

Order of 22nd March, 1844, reducing the charge upon copies made in the office of the *Clerks of Records and Writs* from 10*d.* to 8*d.* per folio : 40,886*l.* 11*s.* 8*d.*

Order of 15th April, 1844, reducing the charge upon copies made in the office of the *Examiners* from 1*s.* 2*d.* to 8*d.* per folio : 7,308*l.* 13*s.*

Order of 21st June, 1844, reducing the charge upon copies made in the office of the *Clerks of Records and Writs*, and also of the *Examiners*, from 8*d.* to 6*d.* per folio : 43,322*l.* 19*s.* 4*d.*

Order of 13th Nov., 1844, further reducing the charge on copies made in the same offices to 4*d.* per folio : 43,322*l.* 19*s.* 4*d.*

Order of 12th Feb., 1845, reducing the per centage upon the amount of bills of costs, as taxed, which by an Order of 26th Oct., 1842, was made payable in the *Taxing Masters'* Office, from 4*l.* to 3*l.* per cent : 32,020*l.* 10*s.*

Order of 3rd March, 1847, reducing the charge upon copies in the *Report Office*, from 9*d.* to 4*d.* per folio : 24,429*l.* 14*s.* 2*d.*

Order of 22nd March, 1851, reducing and abolishing fees in the offices of the *Masters in Ordinary*, the *Taxing Masters*, the *Registrars*, the *Masters of the Report and Entries*, the *Clerks of Affidavits*, the *Examiners*, and the *Clerks of Records and Writs* : 17,656*l.* 17*s.* 8*d.*

The estimated total amount saved to the suitors, therefore, amounts to 208,948*l.* 5*s.* 2*d.*

METROPOLITAN AND PROVINCIAL LAW ASSOCIATION.

ANNUAL REPORT OF THE COMMITTEE.

THE Annual Report of this Society comprises the opinions of the Committee of Management on the various measures for the alteration or amendment of the law which have been under their consideration during the last twelve months, and we select for the present the statement of the exertions of the Committee and their views, —1st, On County Court Advocacy. 2nd, On County Court Abuses. 3rd, On County Court Extension. 4th, County Court Costs.

County Court Advocacy.—The subject of the County Courts has continued to demand a large share of the time and labour of the Committee, and it must do so, until those Courts are placed upon a much more satisfactory footing in many respects, than that on which they stand at present.

“The struggle on the part of the Bar, to obtain exclusive audience or pre-audience in those Courts—a struggle which, were it successful, would entirely subvert the whole principle and object of the institution of the Courts—having become evidently hopeless, has been turned into an agitation for the repeal of the restriction which prevents barristers appearing in the Courts, unless instructed by an attorney. It is very desirable that attorneys should prudently and discreetly take advantage of such opportunities as they may possess, of explaining to the public the real meaning of the question at issue. It is not merely an effect of the aggressive character, always belonging to a body of men who, like barristers, are, by the nature of their profession, and without any voluntary and difficult self organization, banded together in a compact body. Amongst other causes it doubtless arises in great part from the fact, that the Bar, having at length succeeded in securing for themselves an almost complete monopoly of those appointments of emolument and honour, which were formerly shared by the whole Legal Profession, down even to the chief clerkships in the offices of the, so called, Solicitors to Government Boards, has, on that account, attracted to itself a very much larger number of members than can be supported by the regular and legitimate barristers’ business, whether in Court or in Chambers; while, at the same time, the enormous expense and delay attending the administration of Justice in the Superior Courts, coupled with the opportunity that has been afforded to the public of dispensing with the services of barristers, by resorting to the new County Courts, has tended considerably to reduce the amount of that regular and legitimate business. The Bar, therefore, suffering at once from increased numbers and diminished business, is endeavouring, the Committee regret to say, on every side, to break through those rules which have

hitherto prescribed its appropriate functions, and, of course, the attorneys, who are their nearest professional neighbours, are the most exposed to their attacks.

"In November last, the Committee received a letter from the Chairman of a Meeting of Attorneys and Solicitors, which had been held at the Freemason's Tavern in the previous month, enclosing the following resolution, which had been adopted by the meeting:— 'That the Council of the Law Institution, and the Managing Committee of the Metropolitan and Provincial Law Association, be requested to take the necessary steps for promoting a proper understanding between the two branches of the Profession, on the question of County Court Advocacy; and for that purpose, should they think it advisable, to call a General Meeting of the Profession on the subject, on an early day.' The Committee had received no previous intimation that the meeting was to be held, nor, as they ascertained, had the Council of the Incorporated Law Society. They believe, too, that the meeting was not in any way entitled to speak in the name of the Profession, but could only express the opinion of the majority of the gentlemen who composed it. With that opinion, as implied by the resolution, the Committee could not agree. If the object was to communicate to the Bar the fact, that the Solicitors, in claiming their right of audience in the County Courts, were vindicating an important and valued right both for themselves and their clients, the communication was uncalled for. If, on the other hand, it was wished that overtures should be made to the Bar for any surrender, or compromise, of the right in question, more especially if the intention was, as it appeared to be from the report of the proceedings in the *Law Times*, to render it incumbent upon the suitors, in all cases above some small amount, to employ both barrister and attorney, as in the Superior Courts, the Committee entertained no doubt that such a proceeding would be as opposed to the general wish of the Profession, as they believed it to be unjust to the public and injurious to the attorney. The Committee, therefore, replied to the communication by the following resolution:— 'That the Committee do not, at present, see any sufficient reason for calling a meeting for the purpose mentioned; and that they cannot but express their regret that any meeting, purporting to be a meeting of the Profession, should have been called, without more consideration and previous concurrence than appears to have existed in this case.'

"*County Court abuses.*—In the course of the year the Committee have had communicated to them several instances in which, as it appears to them, judgments delivered in different County Courts have been clearly illegal. They think that it would be very advantageous to form a collection of such cases, and also any cases of peculiar hardship resulting from the present scale of costs allowed, for the purpose of their being, at a proper time, submitted to Parliament. They have, therefore, prepared a

register for the purpose, and they invite their subscribers to communicate to them any instance that may occur within their own immediate knowledge. The only mode of checking these illegal decisions, and making the law uniform throughout England in matters within the jurisdiction of the County Courts, is, to give in all cases a right of appeal to the Superior Courts. A clause for this purpose was introduced into the Bill, as brought into the House of Lords this Session, but was afterwards struck out. The Committee have endeavoured to have the clause reinserted in the Bill in the House of Commons.

"*County Court Extension.*—The County Courts Further Extension Bill of last year was returned from the Commons to the Lords, in a shape so entirely different from that in which it had passed the Lords, that there being only a day or two of the Session left, the Bill was allowed to drop. At that time, the Bill provided that barristers might be heard, if instructed by or on behalf of a party, though without any exclusive or pre-audience, and Lord Brougham this year introduced the Bill in the same shape. The provision was, however, objected to by several of the Law Lords, and especially by Lords Truro and Campbell, and Lord Brougham at length unwillingly consented to the present Law being only qualified by the introduction of a clause, that attorneys shall not appear as advocates unless they are instructed directly by the parties in the case. In most other respects, the Bill left the Lords very nearly in the same shape as it was left in by the Commons last year; it is, however, clumsily drawn up, and the Committee have placed in the hands of Mr. Mulling several suggestions for its improvement. Since it has been in the Commons, it has been a good deal altered, and, the Committee regret to say, rendered decidedly more objectionable. The rights of attorneys are proposed to be sacrificed, on the one hand, by permitting barristers to be instructed directly by the parties; and, on the other, by confirming the objectionable practice of the original act, of allowing any party, whether in the Profession or not, and whether in the employ of the party or not, to appear and plead by leave of the Judge. A clause passed by the Lords to provide for judgments by default, which would have been a great boon to the suitors, has been struck out; while, on the other hand, clauses have been inserted to increase the salaries of the Judges, and to provide for their retiring pensions. The Committee would not object to these clauses if justice were done to all parties; but, in its present shape, the Bill is certainly open to very serious animadversions. One other point is sufficiently important to be noticed here. The advocates of the County Courts have, from time to time, obtained returns of the amount of money paid for in these Courts, the amount recovered, and the amount of costs allowed, and it has been taken for granted that these returns show the total expenses at which, by means of the new machinery, debts may

now be recovered. The representations and expostulations of attorneys have been either unnoticed altogether, or considered untrustworthy, as being the interested complaints of men who have been deprived, for the benefit of the suitors, of the remuneration they had been previously receiving for the performance of merely technical and unnecessary labour. It has been overlooked that those returns of costs, with the exception of the small proportion composed of the advocate's fee, includes no costs on either side, except Court fees and witnesses' expenses. It is true, that by one of the most objectionable provisions of the act, the suitors are compelled to commit some important portions, of what ought to be the business of the attorney, to officers of the Court not selected by, or practically, at any rate, responsible to them, and to pay them by Court fees; yet in every case in which either plaintiff or defendant requires professional assistance in preparing his case, he must himself bear the expense of obtaining such assistance, whatever be the result of the trial. It does not require any great experience to know, that with the exception of the simplest cases of 'small debts,' which, under any system, would be collected by the parties themselves, some professional assistance is needed in 'getting up' almost every case that is submitted to a Court of Justice. But, besides what may be strictly termed professional assistance, the majority of plaintiffs, if compelled to conduct their own legal business themselves, must either provide a special staff of assistants for that purpose, or withdraw some portion of their establishment, from time to time, from their regular duties; and, of course, in either case, will be subjected, without compensation, both to trouble and expense. In every way, therefore, in which the subject can be looked at, we must come to the conclusion that the ordinary principle on which the settlement of legal disputes should be founded, is that which has always obtained in our Superior Courts; namely, that each party should be allowed to obtain professional assistance, and that he who is declared by the ultimate judgment to be in the wrong, must pay all the reasonable expenses incurred in consequence of his own fault.

"County Court Costs.—The Legislature has thought fit to establish, by the side of the older tribunals, the new County Courts, in which they have attempted to render the administration of law cheap, by giving to Government officers a monopoly of a large portion of the proper business of the attorney, and enacting that the expense of employing the attorney for the remainder, with the exception of the hearing fee, shall not be recovered as between party and party. There can be little doubt but that the original framers of the acts intended to limit the entire expense of professional assistance, throughout the case, to the single fee allowed, and probably believed that the conduct of the case in Court was the most important, and, perhaps, the only necessary portion of the attorney's duties. Had they possessed practi-

cal experience, they would have been aware that, in a vast number of cases, it is by far the least important and the least difficult portion of those duties; and that, if a case has once been 'got up' by a man of professional knowledge and experience, it may often be safely left in Court in the hands of a comparatively inexperienced advocate.

"These facts, for they are not merely matters of opinion, have rendered it necessary for the suitors in the new County Courts constantly to incur very great expense, which, though successful, they have been unable to recover from the opposite party, and thus not infrequently a victory in Court has become a positive pecuniary loss. Suitors finding themselves in the position above described, owing to the efforts made by the Legislature to limit law costs by mere arbitrary enactment, then attempted to restrict their liability to their own professional adviser, throughout the cause, to the hearing-fee allowed by the act. Such an attempt was, of course, certain, in one way or other, to fail, for, in other words, it was an attempt to pay a member of a liberal profession fifteen shillings for work requiring intelligence and an expensive education, and which, in many cases, would necessarily occupy a considerable portion of several days. After a conflict of decisions, the Superior Courts have now finally settled the question, that the statutory fee is, as its name implies, merely an advocate's fee, and that the attorney is entitled to recover from his client his ordinary professional remuneration for everything that he does in the cause, beyond its actual conduct at the trial.

"These decisions render the suitor in the County Courts liable to his own attorney for costs, on the scale allowed in the Superior Courts; and they are, in fact, higher than the scale which has been voluntarily adopted by the attorneys in several parts of England. The real state of the case has been this Session, for the first time heard in the House of Lords—Lord Lyndhurst having pointed out to their lordships, on the one hand, the hardship upon a creditor in having to pay more in costs for recovering a debt than the whole amount of the debt recovered, and, on the other, the practical impossibility of limiting the cost to the hearing fee, in all cases, irrespective of the amount and nature of the labour involved.

"The Bill at present before the House proposes to meet this difficulty, by empowering the Lord Chancellor to appoint five of the County Court Judges to frame a Scale of Costs, as between attorney and client, and as between party and party, for business transacted in those Courts. The members may rely upon the exertions of the Committee to secure a scale that shall be fair and adequate.

"Another section of the Bill repeats the provision, that the expense of employing a barrister or an attorney shall not be allowed except by order of the Judge; and proposes to enact that the Judges shall from time to time determine in what cases such expenses shall be

allowed. The Committee are of opinion that this is a question which it would be extremely objectionable thus to leave to each Judge individually, especially as one certain result would be, a variance in the practice of the different Courts. One of their suggestions accordingly is, that the Judges appointed to frame the Scale of Costs shall likewise be empowered to make a general order on this point applicable to all the County Courts."

REPEAL OF CERTIFICATE DUTY.

To the Editor of the Legal Observer.

SIR,—With reference to the alleged similarity of the Attorneys' Certificate Duty to other Stamp Duties on licences for carrying on certain trades, it seems very remarkable that the greatest and most remarkable point of difference between them has never been publicly noticed,—I say publicly noticed because it is impossible to suppose it can have escaped the attention of a great many individual members of the Profession. I allude to the obligation imposed on the attorney to take out his certificate and pay the duty every year whether he means to practise or not, or in default of his doing so, I think, for two years, he ceases to be on the Roll and cannot be restored except at considerable trouble and inconvenience attended with additional expense, perhaps including other Stamp Duties, and not only that, but I believe it is also requisite that he pay what is called "arrearage of duty" before he is allowed to pay it for the year during which he intends to resume his practice,—so that if I am right in that respect, he is actually obliged to pay the duty for every year he did not practise, amounting probably in many cases to a large sum,—whereas in every other calling requiring a licence the party may take it out and discontinue it at his pleasure, and resume it again and again as often as he pleases, without

any trouble or additional expense, and without paying "arrearage of duty" or any other penalty whatever. ONE, &c.

[The duty is not charged for the years during which an attorney has not actually practised; but if a year has elapsed since the expiration of his last certificate, he must apply to the Court or a Judge for leave to renew it, and these occasions delay, expense, and trouble.

—ED.]

BANKRUPTS' BALANCE SHEETS.

To the Editor of the Legal Observer.

SIR,—I quite concur with the observations of your correspondent, "A Solicitor," on the subject of Bankrupts' Balance Sheets, printed in your Number for the 8th of May.

As a single practical example is worth a vast amount of argument, I beg to inform you that the experiment of the official assignee preparing the bankrupt's balance sheet has been tried, and with success, at the Court of Mr. Commissioner Ayrton, at Leeds and Hull.

In the letter which the official assignee sends to the bankrupt immediately after adjudication, there is a statement to this effect:—"I beg to inform you, that if you think fit to have your balance sheet prepared in my office, it can be done there without any expense to you."

When the balance sheet is prepared in the office of the official assignee, he is paid a small extra sum for his extra trouble—usually from 5*l.* to 10*l.* or 15*l.* (I never heard of anything like 60*l.*)—which the Court is authorised to order under section 160 of the Bankrupt Consolidation Act, which says the Court may make such allowance out of the estate for preparing the balance sheet "and to such person as the Court shall think fit."

C. O. M.

CANDIDATES WHO PASSED THE EXAMINATION,

Easter Term, 1852.

Names of Candidates.

Acworth, George Brindley
Allen, John
Arkwright, Loftus Wigram
Atkins, George
Ayliff, Edward George
Baker, George
Bannister, Henry
Batten, James Brend
Blyth, Edmund Kell
Booth, Samuel Barker
Buckland, John Albemarle
Buse, Richard Henry
Cattlow, John Reynolds
Chambers, Henry Thomas
Clarkson, George Palmer
Clements, Charles
Coleman, John Sherard
Conington, Henry James
Cooke, William Lawrence

To whom Articled, Assigned, &c.

George Acworth
William Allen; Henry Arthur Beaumont
Joseph Maynard
Thomas Parker, jun.
Thomas Ayliff; Richard Caparn
William Machin
Robert Ascroft; George Bannister
John Penrice Bell
William Henry Reece; Edwin Wilkins Field
Samuel Barker
John Barney.
William Henry English Buraard
John Cattlow; William Henry Trinder
Joseph Moore
Charles James Palmer
Thomas Toulmin
Charles Richardson
White and Lindsay
Benjamin Bubb; Edward Washbourn

Names of Candidates.	To whom Articled, Assigned, &c.
Crallan, Richard Nelson	William Hodeon; John Bridges
Cripps, William Charles	William Gorham
Curray, Benjamin Scott	William Curray; Thomas Wright Nelson
Derry, William Smith	Charles Smale
Ellman, James Boys	Henry Whitmarsh; John Lewis
Finch, William Newton	William Stephens
Fowler, Robert	George Leeman
Gates, Richard Smythe	Thomas Coppard; Septimus Davidson
Gell, Robert, jun.	George Leeman
Gillow, John	Charles Willis
Graham, Charles	George Herbert Kinderley
Gregory, Henry Lewis	John Holliwell Gregory
Gross, Benjamin Lillistone	Simon Batley Jackman
Hadfield, Samuel	George Hadfield
Hawley, Frederick	Nathaniel Overbury
Hawley, John	Sir John B. Williams, Knt.; Robert Medcalf
Hazard, Thomas	William Hazard
Head, John Oswald	James Brown Simpson
Heald, Thomas Mangnall	Edward Scott
Hickley, Thomas Allen	Lawrence Desborough
Hillyer, George	Edward Farn
Holden, James Henry	Thomas Holden
Hughes, George Martin	Frederick Scudamore
Jennings, Richard Francis	George Braes
Johns, Bradford	John H. Todd; Edw. Lyne; Washington H. Brown
Johnstone, Harry Bell	Henry Richardson
Jones, James Webb	Philip Griffith Jones
Letts, John, jun.	John Letts
Levernec, Montague Richard	William Henry Dickson; William Timbrell Elliott
Maddox, John Mortimer	Charles Ireland Shirreff; Charles Marston Stretton
March, Owen	Ernest Rossiter
Mason, William Ludlam	Thomas Phillips Waite
Maynard, William Roper	Joseph Maynard
Murray, George James	Henry Radcliffe
Newman, Mitchell William	Rowland James Ticehurst; John Croft
Norris, Henry	William Huck
Page, William Sutton	William Thomas Paris; Edwin Witchell
Perry, John Arthur	George Parry
Plumbe, Henry	William James Ward
Prickard, Hugh Powell	Jos. Roberts; Berry P. Squance; Evan Williams
Raby, Richard Stephens	Christopher Childs
Redfern, Thomas, jun.	Thomas Redfern, sen.
Richardson, William Benson, B. A.	William Richardson
Roberts, Thomas	William Henry Brown
Sabine, Charles Edwyn	Charles Sabine
Salaman, Joseph Seymour	Thomas Tilton
Shepherd, Edwin Perkins	Charles Willis, jun
Standing, John, jun.	Henry Whitehead
Suckling, John, jun.	John Suckling
Talley, William	William Burrridge; Robert Thomas Head
Turner, Frederick Holden	Joseph Holden Turner
Warden, George	John Suckling
Waterhouse, Robert, jun.	Edward Bramley
Westall, Harry John	Wilson Clement Cruftwell; James Whalley Dawe
Wilkinson, John	William Gray
Williams, William Benman	David Smart; Edward Walker
Willoughby, William Arthur	Edward Willoughby
Wilson, Jonathan	William Stone
Winterbotham, William	John Brend Winterbotham
Wright, John	Edward Procter
Yewdall, Henry	Edward Hailstone

NOTES OF THE WEEK.

LAW PROMOTION.

THE Queen has been pleased to appoint Duncan M'Neill, Esq., one of the Lords of Session and of Justiciary, to be Lord Justice General and President of the Court of Session in Scotland.—From *The London Gazette* of 18th May.

NEW MEMBERS OF PARLIAMENT.

David Jones, Esq., for the County of Carmarthen, in the room of the Honourable George Rice Trevor, now Lord Dynevor, called up to the House of Peers.

The Honourable Arthur Fitzgerald Kinnaird for Perth, in the room of the Right Honourable Fox Maule, now Lord Panmure, called up to the House of Peers.

APPOINTMENT OF SHERIFF.

Her Majesty in Council was this day (15th May) pleased to appoint *Alban Lewis Gwynne*, of Monachty, Esq., to be Sheriff of the County of Cardigan, in the room of John Inglis Jones, of Derry Ormond, Esq.—From *The London Gazette*, of 15th May.

CHARITABLE TRUSTS BILL.

Mr. Secretary Walpole stated, on Wednesday last, that in consequence of the numerous amendments proposed in this Bill, the Government had determined to proceed no further with it during the present Session.

PETITIONS FOR REPEAL OF CERTIFICATE DUTY.

Since the last List, from the following places:—

Abergavenny.
Chapel-en-le-Frith.
Chatham.
Congleton.
Epsom.
Ireland, Society of Attorneys and Solicitors of.
Kilkenny.
Loughborough.
Maidenhead.
Malmesbury.
Portsmouth.
Spalding.
Trowbridge.
Usk.

RECENT DECISIONS IN THE SUPERIOR COURTS.

AND SHORT NOTES OF CASES.

Lord Chancellor.

In re North of England Joint-Stock Banking Co., ex parte Nelson and another. March 31; April 15, 21, 1852.

WINDING-UP ACT.—CONTRIBUTORY, ALTHOUGH NOT MEMBER.—EXECUTORS.

Shares were purchased by S. in a banking company, but a formal transfer in accordance with the deed of settlement was taken of 10 only, but S. received dividend warrants on the whole number which were signed for him and by his authority, and it appeared that he treated the shares as his property: Held, dismissing, with costs, an appeal from Vice-Chancellor Knight Bruce, that S.'s executors were liable as contributories in respect of the whole number of shares.

Held, also, that persons may be liable to contribute towards the expenses of a company, although not "members" under the deed of settlement.

THIS was an appeal from the decision of Vice-Chancellor Knight Bruce. It appeared that Mr. John Staffon, of South Shields, had purchased, in October, 1844, through a broker, 120 shares in the above company, notice of the sale being given to the directors, who had allowed the transfer. There was, however, a formal transfer by deed, signed by Mr. Staffon's nephew as his agent, in respect of 10 shares only, subject to the covenants of the deed of settlement, but new certificates of the whole had been delivered by the bank to Mr. Staffon. Other purchases were subsequently made by Mr. Staffon, upon which he received the dividends, and there were dividend warrants in respect of 700 shares signed for and by the authority of Mr. Staffon. The Master

Farrer placed the executors of Mr. Staffon on the list of contributories for 700 shares, and the Vice-Chancellor Knight Bruce having affirmed his decision as to the 120 shares, and as to the remaining shares referred it back to inquire as to the terms and nature of the contract in regard thereto, this appeal was presented.

Bethell and W. D. Lewis in support, on the ground that no transfer in accordance with the deed of settlement had ever taken place, except as to ten shares.

Bacon and J. V. Prior, for the official manager, contra.

Cur. ad. vult.

The Lord Chancellor, after stating the facts of the case, said, that in s. 3 of the 11 & 12 Vict. c. 45, it was provided that members should be contributories, and also all persons in any way liable to contribute towards the debts and expenses, and in s. 76 the official manager was directed to make out a list of the members and other contributories, and a party might therefore be liable to contribute towards the debts, although he was not a member. In the present case, although the shares had not been transferred in conformity with the strict letter of the deed of settlement, they were transferred substantially in accordance with it, and Mr. Staffon had received dividends on them and exercised all acts of ownership. The appeal must therefore be dismissed, with costs, and the executors held liable as contributories in respect of the whole 700 shares.

Lord Justices.

Bellon v. Powell. March 11, 12; April 32, 1852.

ADMINISTRATION SUIT.—ABATEMENT.—

REVIVOR AND SUPPLEMENT.—ORIGINAL SUIT.—STATUTE OF LIMITATIONS.

A suit abated in 1838 by the marriage of the plaintiff, and was not revived by her up to the time of her death, in 1848. A bill of revivor and supplement filed in 1847 by a defendant, who was made a party in 1836, upon an objection for want of parties taken at the hearing, was held to be in the nature of an original suit, and the claim being therefore barred by the Statute of Limitations, the bill was dismissed with costs.

THIS was an appeal from the decision of the Master of the Rolls (reported 14 Beav. 275). It appeared that upon the death of David Bolton, intestate, letters of administration were obtained by his son, William Powell, and the usual bond entered into, under the 22 & 23 Car. 2, c. 10, s. 1, and dated 18th Oct., 1815. William Bolton died in 1817, having received considerable assets, and in Dec., 1832, the plaintiff, who was one of the next of kin and administratrix *de bonis non*, of David Powell, filed this bill against the son's representatives and the sureties in the administration bond, and the legal personal representatives of the late archbishop, to enforce payment out of the son's real estate, of a sum of 5,795*l.*, the balance of a claim established by the plaintiff in a creditor's suit, for the administration of the son's personal estate, and the Ecclesiastical Court ordered the bond to be attended with in Chancery as might be requisite and necessary for the furtherance of justice. In 1836, when the cause came on for hearing, it was directed to stand over for want of parties, who were accordingly added, but the suit abated in 1838, by the marriage of the plaintiff, who died in 1847, without having revived. A bill of revivor and supplement was then filed in 1848, by Mrs. Howard, who was one of the defendants added in 1836, to have the benefit of the former proceedings. The Master of the Rolls having dismissed the bill with costs, on the ground that the proceedings on the bond should have been taken in the name of the Ordinary, this appeal was presented.

Bethell, Glasse, and Whitbread, for the appellants; Willcock, A. J. Lewis, L. Shadwell, Cole, and Haere, for the respondents.

Cur. ad. vult.

The Lords Justices said, that as the present suit could not be considered as a continuance of the original suit, but must be itself regarded as an original suit, the claim was barred by the Statute of Limitations, and the bill be dismissed with costs.

Master of the Rolls.

Gooday v. Colchester and Stow Valley Railway Company. April 30, 1852.

RAILWAY COMPANY.—SPECIFIC PERFORMANCE OF CONTRACT TO TAKE LANDS.

A bill was dismissed, but without costs, for the specific performance by a railway company of a contract for the purchase of

lands through which a contemplated branch line would pass, and in consideration of which the plaintiff had withdrawn his opposition to the passing of the act for the purpose through Parliament,—it appearing that the contract was entered into, not by the present company, but by the old company, and not under their corporate seal.

THIS was a bill to enforce the specific performance of a contract entered into by the defendants who were applying to Parliament for an act to enable them to construct a branch line which was to pass through the plaintiff's land, for the payment to him of the sum of 1,850*l.* for such land in consideration of his withdrawing his opposition to the bill. It appeared that the defendants obtained their act, but they omitted to construct the line, and the compulsory powers under their act had expired.

Roupell and J. H. Palmer for the plaintiff; Lloyd and Goodere, for the company, contended the agreement was void on the ground of its not being under seal.

The Master of the Rolls said, it was clear no contract had been entered into with the defendants that could be enforced, as it was not entered into with the present company, nor, as it was not under the corporate seal, with the old company. The bill would therefore be dismissed, but, under the circumstances, without costs.

Brookhurst v. Flint. April 21, 1852.

POWER OF APPOINTMENT.—WILL.—CLAUSE FOR ADVANCEMENT.—CHARGE ON SHARE.

Certain estates were directed by a testator to be sold, and the proceeds to be invested in trust for the parties mentioned in the will, in such shares and proportions as his wife should appoint, and in default of appointment, among them equally, and there was a direction that so much as should be advanced to any of the objects of the power of appointment, should be charged on their several shares. The wife having appointed by her will, and directed that what she gave thereby was to be the share of each, notwithstanding the clause in her husband's will, creating any advances a charge on their shares: Held, dismissing a claim by one of the objects of the appointment, that the advancement clause only applied in the event of the fund being unappropriated, and did not affect the disposition under the wife's will.

THE testator, John Fowler, by his will, dated in April, 1818, after charging certain of his real estate with the payment of his debts in aid of the personality, devised it to trustees for a term of 500 years, upon the trusts therein specified, and subject thereto to his wife for her life, with remainder to his daughter in fee. Estates in Staffordshire and Cheshire were then

directed to be sold, and the proceeds to be invested in trust for the parties therein mentioned in such shares and proportions as his wife should appoint, and in default of appointment, among them equally, and also, that if these estates should not produce the sum of 16,000*l.*, the difference should be charged on the Houghton Estates. The testator also directed that so much as should be advanced to any of the objects of the power of appointment should be charged on their several shares. The testator died in May, 1827, and his wife in 1846, having by her will, dated in 1828, apportioned the fund in certain proportions, and stating, that what she had thereby given was to be the share of each, notwithstanding the clause in her husband's will rendering any advances a charge on their shares.

This claim was thereupon filed by her daughter, seeking to establish her right under her father's will, in opposition to the direction contained in Mrs. Fowler's will.

Roupeil, R. Palmer, James, Faber, J. V. Prior, and C. Hall, for the respective parties.

The Master of the Rolls said, that the advancement clause only applied to the fund that should be unappointed, and did not therefore affect the disposition under Mrs. Fowler's will, and the claim was accordingly dismissed.

Vice-Chancellor Turner.

Goodchap v. Weaving and others. April 30, 1852.

ANSWER.—EXCEPTIONS FOR IMPERTINENCE.—SETTING OUT BILLS OF COSTS.

Exceptions for impertinence were allowed, with costs, to an answer in the schedule to which were set out the bills of costs which the defendants had paid or were liable to pay, in answer to an interrogatory to a bill charging fraud in respect of a purchase and the exercise of a power of sale under a mortgage upon some of the purchase-money remaining unpaid, and which required them to set out the full particulars and amount of their costs, charges, and expenses, and where and when and how the same were incurred; and held it would have been sufficient to set out the amount of the bills and the business in respect of which they were incurred.

In the answer to this bill which was filed by the official manager of the National Land Company and charged Messrs. Weaving and Pinnock with fraud in respect of an estate sold by them to Mr. Feargus O'Connor, part of the purchase-money being permitted to remain due on mortgage, the defendants set out in the schedule bills of costs between them and their solicitors which they had paid or were liable to pay, in answer to an interrogatory requiring them to set out the full particulars and amount of their costs, charges, and expenses, and where and when and how the same were incurred. Exceptions were now taken to this part of the answer for impertinence.

Sir W. Page Wood and Rosburgh in support; *Bagshawe* contra.

The Vice-Chancellor, after referring to *Norway v. Rowe*, 1 Mer. 347, said, that it would have been sufficient to have merely set out the amount of the bills and the business in respect of which they were incurred, and allowed the exceptions accordingly, with costs.

Vice-Chancellor Kindersley.

Atkinson v. Gylby. April 27, 1852.

BOND TO INSURANCE COMPANY TO SECURE LOAN AND PREMIUMS ON POLICY—RIGHTS OF ASSIGNEES AGAINST SURETY.

*An insurance company advanced to E. two sums of money upon an agreement for his insuring his life in two sums of 1,000*l.* each, and executing bonds to secure the amount of the loans with interest at 5*l.* per cent., and for payment of the premiums on the policies. The company afterwards dissolved, and assigned its debts and assets to the B. insurance company. The bond was taken to the former company, "their executors, administrators, or assigns." Held, that the assignees of the bond could not enforce, as against the surety's estate, the condition in respect of the premiums, although they could the assignment of the debt.*

Bethell and Haldane appeared in support of exceptions which had been taken to the Master's finding in the suit which was instituted for the administration of the estate of John Parker Gylby. It appeared that in July, 1841, William Edwards borrowed a sum of 500*l.* from the London and Westminster Mutual Life Assurance Company, upon an agreement to insure his life in their office for 1,000*l.*, and to execute a bond, for the payment of the loan with interest at 5*l.* per cent. and the premiums upon the policy, to the company, "their executors, administrators, or assigns," of which bond the testator was a surety. In January, 1842, Edwards borrowed another sum of 450*l.* and insured his life for 1,000*l.*, giving another bond for payment of that sum, with interest, and of the premiums, the testator being one of the sureties. In October, 1844, the company ceased to carry on business, and its affairs were wound up, and in December, 1844, the debts and assets of the company were assigned to the Britannia Life Assurance Company. Mr. Gylby died in June, 1843, and the premiums on the policies not having been paid since the assignment to the Britannia Company, they claimed against Mr. Gylby's estate the payment of the sums borrowed and of the premiums in arrear. The Master allowed their claim, whereupon exceptions were taken thereto, so far as related to the payment of the premiums.

Malins and Cairns, contra.

The Vice-Chancellor said, that with regard to the borrowing of the money, the assignment

was good in Equity, and the assignee of the debt would be entitled to the benefit of such assignment. With respect, however, to the premiums, the case was very different. The policies were effected by way of additional security to the insurance company, and upon the faith of the substantial nature of the office, whose funds would at some future period have to provide for the payment of the sums secured by the policies. It could not therefore be said that any person to whom they assigned their business upon their being dissolved and wound up, was entitled to the same rights as the original company had. And besides as the surety would be entitled to repay himself the premiums upon the policies falling in by the death of Edwards, the substantial nature of the company, on the faith of which he had become a surety, was of the greatest importance. The exceptions must therefore be allowed.

Vice-Chancellor Parker.

Warwick v. Hawkins. April 29, 1852.

WILL AND CODICIL.—LEGACY TO MARRIED WOMAN FOR SEPARATE USE.—CLAIM.

*A testator, by his will, gave an annuity of 100*l.* to the wife of W. W., to her separate use, and by a codicil thereto, "in addition to the legacy mentioned in my will, the sum of 300*l.*, to be paid to her free of legacy duty." Held, on claim against the executors, who admitted assets, that the 300*l.* was given to Mrs. W. for her separate use, and the costs were directed to be paid out of the testator's general estate.*

This was a claim against the executors of the will of William Bayley, for payment of a legacy of 300*l.* to the plaintiff, to her separate use. It appeared that the testator, by his will, had given the plaintiff, who was the wife of Mr. William Warwick, an annuity of 100*l.*, to her separate use, for life, and by a codicil thereto, "in addition to the legacy mentioned in my will, the sum of 300*l.*, to be paid to her free of legacy duty." It appeared that there was no settlement on the marriage of the plaintiff and her husband, and the defendants admitted assets.

Glasse and Faber in support, citing *Day v. Croft*, 4 Beav. 561; *Malins and Dauncey* for the executors, did not oppose.

The Vice-Chancellor said, there must be a declaration that the sum of 300*l.* was given to the plaintiff for her separate use, and directed the costs to be paid out of the general estate of the testator.

Court of Queen's Bench.

Northey v. Johnson. April 20, 1852.

MINE CONDUCTED ON THE COST BOOK SYSTEM.—ORAL SURRENDER OF SHARES.—LIABILITY OF SHAREHOLDER.

The defendant, having orally agreed to take shares in a mine, conducted on the cost book system, after some time, by parole, re-

linquished them to and they were accepted by the pursuer, who conducted the mine: Held, refusing a rule nisi for a new trial, that the defendant was not liable for goods supplied for the mine after the date of such surrender.

This was an action to recover from the defendant, a shareholder in a mine conducted under the cost book system, for goods supplied to carry on the same. On the trial, at the last Spring Assizes for Devon, before Mr. Justice Erle, it appeared that the mine was brought out by a Mr. Diamond, who acted as pursuer, and that the defendant had agreed by parole to take some shares, and after some time had relinquished them orally to the pursuer, who consented to receive them back. The defendant having obtained a verdict, this motion was made for a rule nisi for a new trial, on the ground that a written transfer of the shares was necessary, under the cost book system.

Crowder, Q. C., in support.

The Court said, that although there was no doubt the ordinary course was to transfer the shares in writing, and to send such transfer to the pursuer, it was not absolutely necessary to do so, if the shares were given up with the knowledge of the pursuer or the other shareholders. And, as the authority of the pursuer to pledge the credit of the other shareholders rested on their consent to join in working the mine, when any party who had verbally agreed to join in the undertaking was dissatisfied with its conduct, and gave notice of his withdrawing from the concern, the pursuer had no longer a right to pledge his credit. The rule would therefore be refused.

Queen's Bench Practice Court.

(*Coram Mr. Justice Coleridge.*)

Wilde v. Sheridan. May 1, 7, 1852.

COUNTY COURTS' ACT.—ACTION ON BILL OF EXCHANGE.—JURISDICTION.

A bill of exchange was drawn by the plaintiff at Norwich on the defendant, and addressed to him in London, and he accepted it, making it payable at a London banker's, and the bill was then returned to the plaintiff at Norwich, who negotiated it there, and upon its being dishonoured, he sued the defendant in the Norwich County Court, by leave of the Judge, under the 9 & 10 Viet. c. 95, s. 60. A rule for a prohibition was made absolute from further proceeding with the action.

This was an action on a bill of exchange, dated 2nd December, 1845, and drawn by the plaintiff at Norwich upon the defendant, and addressed to him at No. 26, Gresham Street, London, and the defendant accepted, making it payable at Roberts and Co., London. The bill was then transmitted to the plaintiff at Norwich, where he negotiated it, and upon its being dishonoured he sued the defendant in the Norwich County Court by leave of

the Judge, under the 9 & 10 Vict. c. 95, s. 60, which provides, that "such summons may issue in any district in which the defendant or one of the defendants shall dwell or carry on his business at the time of the action brought; or by leave of the Court for the district in which the defendant or one of the defendants shall have dwelt or carried on his business, at some time within six calendar months next before the time of the action brought, or in which the cause of action arose, and such summons may issue in either of such last-mentioned Courts." The learned Judge having overruled an objection of the want of jurisdiction, this rule had been obtained for a writ of prohibition, to restrain him from further proceeding in the action.

Phippen now showed cause against the rule, which was supported by Joyce.

The Court, after taking time to consider, said, that in this case the contract was made in London, and that the whole cause of action did not, therefore, arise in Norwich, and the rule must therefore be made absolute for a prohibition.

Court of Common Pleas.

Stoddman v. Chappell. April 17, 1852.

NEW TRIAL.—SURPRISE.—DEFENCE OF ATTORNEY'S RETAINER BEING ALTERED.

A rule was made absolute for a new trial on payment of costs, upon the ground of surprise, where on the trial of an action to recover the amount of an attorney's bill of costs on the defendant's retainer to defend an action of ejectment, the defendant was called at the close of the plaintiff's case and gave evidence that when he signed the retainer it was not directed to the plaintiff, but that his name had been since inserted.

This action was brought by an attorney to recover for work and labour on his retainer by the defendant in the defence of an action of ejectment. It appeared that the retainer was not disputed until the conclusion of the plaintiff's case at the trial, before L. C. J. Jervis, when the defendant was called as a witness and proved that the plaintiff's name and address were not in the retainer when he signed it, and the verdict having thereupon passed for the defendant, this rule had been obtained for a new trial on the ground of surprise.

Huddleston showed cause; *Hawkins* and *Joyce* in support were not called on.

The Court said the defence had been unfairly sprung upon the plaintiff, and as the question in dispute involved a serious charge against the plaintiff and ought to be investigated upon full notice, the rule would be made absolute on payment of costs.

¹ See *Hath v. Long*, 19 Law Jour., N. S., Q. B., 325; *S. C.*, *Heath v. Long*, 1 L. M. & P. 333; *Roff v. Miller*, 19 Law Jour., N. S., C. P., 278.

Court of Exchequer.

La re Jones. April 23, 1852.

VAGRANT ACT.—COMMITMENT, SUFFICIENCY OF.—DESCRIPTION OF STREET.

Held, discharging a prisoner on habeas corpus, that it was not sufficient in a commitment under the 5 Geo. 4, c. 83, s. 4, to allege simply that the prisoner frequented a street called Regent Street for the purpose of committing a felony, without going on to state it was a place of public resort.

The prisoner, Elizabeth Jones, had been committed under the Vagrant Act, 5 Geo. 4, c. 83, and the commitment alleged that the prisoner frequented a street called Regent Street for the purpose of committing a felony. A writ of habeas corpus having been obtained to bring up the prisoner,

Huddleston now moved for her discharge on the ground the commitment should have gone on to describe the street as being itself a place of public resort, referring to s. 4 of the Vagrant Act, which enacts, that "every suspected person or reputed thief, frequenting any river, canal or navigable stream, dock or basin, or any quay, wharf, or warehouse near or adjoining thereto, or any street, highway, or avenue leading thereto, or any place of public resort, or any avenue leading thereto, or any street, highway, or place adjacent, with intent to commit felony."

The Court said, the object of the act was to protect places where valuables might readily be found by those inclined to steal them, and that the commitment in this case was insufficient, and the prisoner was accordingly discharged.

Court of Exchequer Chamber.

Regina v. Greenwood. April 24, 1852.

INDICTMENT FOR UTTERING COUNTERFEIT COIN.—PRESENCE OF PRISONER.

A prisoner was held to have been properly convicted of having uttered a counterfeit shilling, where he was shown to have been a participator in the proceeds and had counterfeit coin in his possession, although he was not actually present when it was uttered by his accomplice.

In this case the prisoner, William Greenwood, had been indicted with another person for uttering a counterfeit shilling. It appeared, however, that his accomplice had passed it in his absence, but it was shown that he had participated in the proceeds, and he had counterfeit coin in his possession. On the trial before Mr. Justice Taftford at Exeter, he was found guilty, and the point was reserved whether the absence was material.

The Court affirmed the conviction.

May 12.—*Regina v. Ion*—*Cur. ad. vult.*

—12.—*Eastern Union Railway Company v. Hart and another*—*Cur. ad. vult.*

The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

SATURDAY, MAY 29, 1852.

NISI PRIUS OFFICERS' AND JUDGES' CLERKS' BILL.

ABOLITION OF OFFICE FEES.

A SUMMARY of the Bill introduced by the Attorney-General, and embodying many of the recommendations of the Common Law Commissioners, with respect to the officers and fees at Nisi Prius and at the Judges' Chambers, appeared in our last Number, p. 61.

The main object of the Bill appears to be, to assimilate the position of those officers who are now remunerated by fees paid to them by the suitors, and of which they render no account, to another and not less important class of officers who are paid by salaries, and render an account of all monies received by them to the Treasury. That any class of officers in a Court of Justice should be remunerated by fees collected personally on their own account from the suitors is decidedly objectionable, and the time and manner in which what are called "Court fees" are collected, during the progress of a trial at Nisi Prius, renders the payment most irksome and intolerable. It will be readily conceded, therefore, that the plan now proposed, of paying the officers by salaries and requiring them to render accounts periodically of the fees received to the Treasury, is an improvement upon the existing system.

But we are disappointed to find that Government has not met the evil boldly, and proposed to abolish the fees altogether, and to throw this portion of the expenses of the judicial establishment of the country upon the Consolidated Fund. The salaries of the Judges of the Courts of Law form a part of the Civil List, and are supposed to be paid out of the general funds of the country. In

point of fact, however, the suitors pay a fee to the Chief Judge of each Court upon the entry of every cause. In the Queen's Bench this fee is 6s. 8d., in the Common Pleas 10s. 9d., and in the Exchequer 13s. 4d. Since the passing of the Statute 6 Geo. 4, c. 84, s. 6, by which the salaries of the Judges were settled, these fees have not gone into the pockets of the Judges, but they are paid by the suitor precisely as they had been previously, and find their way into the public Treasury. The suitor is in no degree relieved from payment of the fees because their destination is changed, and the Bill now before Parliament does not afford the suitor any present relief, either in respect to the fees paid upon the entry of causes at Nisi Prius, remanet fees, or what are called "Court fees," the average amount of which, in an undefended cause, however short and simple, is stated by the Common Law Commissioners¹ to amount to 4l. 1s. 6d., which is compounded of the following items:—

Marshal and Associate (including £ s. d.	
2s. to the Chief Baron's coachman,	
and 2s. to the ushers)	1 17 0
Three exhibits in undefended ac-	
tion	0 6 0
Crier	0 12 0
Jury	0 12 0
Usher	0 11 0
Court-keeper	0 2 0
Tipstaff	0 1 6
	24 1 6

The fees paid upon the entry of a cause in the Queen's Bench amount to 11s. 8d.; in the Common Pleas, 13s. 9d.; and in the Exchequer, 16s. 8d.

The only positive abolition of fees is to be found in the last section of the Bill be-

¹ First Report, p. 62.

fore Parliament, by which it is proposed to enact that the fee of 6s. 8d., now paid to the Marshals of the Judges of Assize on Circuit, for the use of the Judge, be abolished.

Some hope, however, of a prospective reduction of fees arises from the introduction of the following clause, which is numbered 10 in the printed Bill:—

“And whereas it is expedient that a new Table or Tables of Fees proper to be taken in the said Superior Courts and their several Offices, and at the Judges' Chambers, and by the Clerks of Assize acting as Associates on the Circuits, should be prepared, with reference to the various changes and alterations which have been or may be made in the Process, Practice, and Proceedings of those Courts, and to the diminution of expense, where practicable, to the suitors: Be it enacted, that it shall and may be lawful for the Commissioners of her Majesty's Treasury, and they are hereby required, forthwith to prepare or cause to be prepared a Table or Tables of Fees, specifying what fees are proper to be demanded and taken in the said Courts and Offices at the Judges' Chambers, and on the Circuits, and what fees should be abolished; and such Table or Tables shall be laid for approval before the Judges of the said Courts; and the said Judges, or any six or more of them, of whom the Lord Chief Justices and Lord Chief Baron shall be three, are hereby empowered and required, as soon as conveniently may be, to revise and settle the said Table or Tables of Fees, so prepared as aforesaid, and from time to time to add to or reduce, alter, or amend the same, as they may deem necessary and proper, and the said Table or Tables of Fees so revised and corrected as aforesaid from time to time, to allow and sanction, by affixing their signatures respectively thereto, and to establish the same in and for the said Courts; and the said Commissioners for her Majesty's Treasury are required, so soon and as often as such Table or Tables of Fees have been sanctioned and allowed by the Judges, to cause the same to be inserted and published in the *London Gazette*; and from and after such publication no other fees than those sanctioned and allowed as aforesaid shall, on any pretence whatever, be demanded or taken by any officer or clerk of the said Courts in respect of any duty or service to which such Table or Tables of Fees may relate; provided that until the publication of such Table or Tables of Fees under the authority aforesaid, the fees now lawfully taken by the said officers and clerks shall and may continue to be taken.”

Under this section, a Table of Fees is *hereafter* to be prepared by the Treasury, submitted to the Judges for correction and revision, and when thus sanctioned to be published in the *London Gazette*, but *until* the publication of such Table of Fees the

fees now taken shall continue to be taken. This arrangement may be convenient to those who have framed the Bill, but it would have been more satisfactory, as well as more constitutional, for the Legislature to have at once assumed the responsibility of fixing the amount of fees to be paid by suitors in the Superior Courts, as it has already done with regard to the County Courts, instead of throwing it on the Commissioners of the Treasury to determine what sums should be paid by the suitors in her Majesty's Courts for Justice.

It is still more to be regretted, however, that at a period when alterations and reforms in the law are so well received, the opportunity should be lost of urging upon the Legislature the propriety of sanctioning the principle of abolishing the fees of office in Courts of Justice and paying the officers out of the public taxes. As the matter at present stands, the suitors in the Superior Courts of Law not only pay the officers engaged in the administration of Justice, but also contribute, by compulsory fees, to swell the amount of general revenue. For, example, whilst the Statute 7 Will. 4 and 1 Vict. c. 30, did, with respect to the Masters, what is now proposed to be done with the Nisi Prius officers,—namely, directed that they should be paid by salaries instead of fees,—the fees were still retained, and the Masters pay the amount into the Treasury.

Now, it appears, by returns made to Parliament, that the surplus paid by the Masters, after deducting their own salaries and the expenses of their offices, was, in 1847, 16,809*l.*; in 1848, 16,719*l.*; in 1849, 11,891*l.* and in 1850, 9,855*l.* A tax, therefore, and one of the most objectionable character, has been levied on the suitors of the Courts in augmentation of the public revenue. Without questioning the sincerity of those Law Reformers who stand by and “make no sign” when a measure is introduced by which the principle of taxation by fees is affirmed, we may venture to state, that no reform in the administration of the Law would be so safe and satisfactory, and we verily believe there could be none attended with better results, than a measure sweeping away those office fees which are now imposed upon almost every step in a cause.

EDUCATION FOR THE BAR.

THE regulations adopted by the Inns of Court in reference to Students for the Bar, as published in a former Number, (*ante*, vol. 43, p. 305,) came into operation on the first day of this present Trinity Term, and apply, not only to all persons entering as students after that day, but also to all existing students who had not on the first day of Trinity Term kept more than four Terms. It is also announced by the governing bodies of the respective Inns of Courts, that students to whom the regulations do not necessarily apply, may nevertheless, if they desire it, be admitted to the benefit of the Lectures and Classes, and be entitled to submit themselves to public examination, upon the same terms and subject to the same regulations as are applicable to students who may enter hereafter.

That there is no deficiency either in the number or qualification of the Candidates who are willing to undertake the office of Lecturer in the several Inns of Court can excite little surprise, when we consider the over-crowded state of the Bar. The difficulty the Benchers have to contend with will be to select from amongst a number apparently equally well qualified. We are not yet able to announce upon whom the choice has fallen in any of the Inns, but the appointments, if not already made, cannot be long postponed. The names of Candidates for the Readership on Constitutional Law and Legal History, to be founded by the Four Inns jointly, it is announced will be received until the 7th June next.

Having stated in what respect the scheme of the Benchers appears to be defective, as failing to afford any test of proficiency for the Bar, and entered our respectful, but decided, protest against the injustice of a system which proposes to devote funds held in trust for the advancement of the whole Profession to the exclusive benefit of the smallest branch, we have only to express a hope, that the new regulations may be more successful in elevating the character of the Bar, than is generally anticipated. The ground upon which the Benchers are understood to have rejected the proposal to render a public examination of proficiency an indispensable preliminary to a call to the Bar, is the expediency of permitting young gentlemen of rank and connexions to acquire the title of Barrister, who do not propose to enter upon the practice of the Profession. To us it appears that opening the ranks of the Profession to those who

do not design to pursue it legitimately, but to use it as a stepping-stone, is to perpetuate the race of place-hunters who have contributed to bring scandal on the Profession and lowered its character with the Public.

CERTIFICATE DUTY REPEAL.

OUR readers will participate with us in the regret we feel at the unfortunate postponement of the motion for bringing in the Bill to Repeal the Certificate Duty. At the time it was expected to come on, that is, between five and six o'clock on Tuesday last, the House was crowded to excess. It stood second on the list of Motions which are taken before the orders of the day, and had the Maynooth Question been closed or adjourned, there would in all probability have been a large majority in favour of the Bill. Not only had two hundred petitions been presented or were in readiness to present, but three-fourths at least of the members of the House had been addressed by their constituents, urgently requesting their support of the measure.

When the day was fixed, there could, of course, be no possible anticipation of the Maynooth, or any other debate, being appointed for the morning Sitting. No less than four divisions took place between four and six o'clock, and it then became necessary to adjourn for the purpose of refreshment, and the business was suspended till eight o'clock. It was intended to resume the Maynooth debate in the evening. The motion on the Certificate Duty and another motion which stood before it (but was not expected to occupy much time) might have come on soon after eight; but, evidently in order to throw over the Papist Question, the House was counted out, and Lord R. Grosvenor will have again to struggle for a favourable position at a future day. If it should not be an early day, the prospect of success in the present Session will, of course, be diminished.

There is reason, however, to believe that the Government will, at all events, distinctly admit the justice of the claim, though they may object to any immediate change in the Financial Plan.

Since writing the above, we learn that the 15th June is the earliest that can be fixed; but it is confidently stated that the Session will not close till the middle of July.

IMPROVEMENT OF THE JURISDICTION OF EQUITY BILL.

AS AMENDED IN COMMITTEE.

THIS Bill, introduced by the Lord Chancellor, and ordered to be printed on the 10th May, was referred to the Select Committee on the Masters' in Chancery Abolition Bill. The Committee have made their report, and the Bills have passed through a Committee of the whole House.

The substance of the Clauses are as follow :—

1. Process and Pleading.

Discontinuance of engrossing bills on parchment, and a printed copy to be filed instead ;¹ sect. 1.

Writs of subpoena and summons to be abolished ; 2.

Defendant to be served with a printed copy of bill, in lieu of the writ of subpoena and summons ; 3.²

The filing and service of a printed copy of bill to have the same effect as the filing and issuing of writs of subpoena and summons ; 4.

Service of printed copy of bill to be effected in same way as the writ of subpoena is now served ; 5.

Notwithstanding provisions in this Act, written copies of bills may be served in certain cases ; 6.

Plaintiff to deliver printed copies of bills at rate prescribed by Lord Chancellor ; 7.

Provisions as to filing, &c., of printed copy of bill, to be extended to amendments ; *Proviso for revising the present practice* ; 8.

Bills of complaint to contain concise narratives of material facts, &c., divided into numbered paragraphs ; 9.

Person whose name is used as next friend of any infant, &c., in any suit to sign a written authority ; 10.

In any suit, permission to be obtained for the use of person's name as next friend of any infant ; 11.

Interrogatories to be filed in Record Office, by plaintiff, within time prescribed ; 12.

Defendants may answer, though not required so to do by plaintiff ; 13.

Defendants answer may contain material statements, though not answers to interrogatories ; 14.

Plaintiff may, on expiry of time for answer-

ing, but before replication, move for decree or decretal order ; 15.

Court may refuse or grant said motion, or make order for further prosecutions, &c. ; 16.

Exceptions to bills and answers for impertinence abolished. Proviso for application to the Court for costs ; 17.

[This clause was added in Committee.]

Court [or Judge] may order defendant to produce documents, &c., on oath ; 18.

In certain cases, defendant, after answer, may file interrogatories for examination of plaintiff ; 19.

Upon application of defendant after answer, plaintiff may be required to produce documents on oath ; 20.

Practice of Court as to issuing commissions with respect to pleas, &c., abolished ; 21.

Pleas, &c. to be filed without oath of messenger ; 22.

Where decree, &c., not given or made, issue may be joined by filing replication as at present ; 23.

Defendant not required to answer, and, not answering, may move for dismissal of bill for want of prosecution ; 24.

2. Examining Witnesses and Evidence by Affidavit.

Practice of Court as to, and mode of examining witnesses, abolished ; *Proviso* ; 25.

Plaintiff, where suits by bill at issue, may give notices to defendant to adduce evidence orally, or by affidavit ; 26.

Evidence may be taken orally, if required ; 27.

Witnesses to be examined by one of the examiners of the Court in the presence of the parties ; 28.

Depositions to be taken down in writing, and read over to the witness, who shall sign the same in presence of parties ; 29.

If parties refuse to be sworn, or answer any lawful question, the same course to be pursued as is now adopted ; 30.

Original depositions to be transmitted to the Record Office ; 31.

Not necessary to sue out commission for examination of witnesses ; 32.

Affidavits as to particular facts, &c., may be used ; 33.

[Such affidavits to be subject to same rules, &c., as relate to oral examinations ; 33.]

Affidavits to be divided into numbered paragraphs ; 34.

Evidence oral or by affidavit, on both sides, to be closed within time prescribed by General Order ; witnesses by affidavit to be subject to cross-examination ; 35.

Court may orally examine any witness, and determine the payment of costs of such examination ; 36.

Any party in a cause may by subpoena require attendance of any witness before an examiner ; 37.

Evidence subsequent to hearing to be taken in same manner as prior to hearing ; 38.

¹ We fully believe that this project of printing the bill, the form of which must vary in almost every case, would lead to increased expense and delay if it were practicable ; but in numerous cases, if not the majority, the regulation will be mischievous.

² Here will be a manifestly useless expense in serving the bill on every defendant. Several, if not all of them, may appear by one solicitor.

3. *Of the Parties to the Suit.*

Defendant not to take objection for want of parties to suit in cases of legatees, devisees, cestuis que trust, &c.; 39.

Objection for want of parties; 40.

Court may proceed in any suit, &c., without representative of deceased person, or may appoint one; 41.

4. *Administration Suits.*

Creditor, &c., may summon administrator to show cause why personal estate not administered to; Judge may order administration of such estate; 42.

Copy of summonses to be filed in Record Office of Court; 43.

Creditor, &c., may obtain similar order for administration of real estate; 44.

Court may direct sale of mortgaged property instead of a foreclosure; 45.

Suit not to be dismissed for misjoinder of plaintiffs, but Court may modify its decree; 46.

Court may decide between some of the parties without making others interested parties to the suit; 47.

5. *Revivor of Suits and Amendments.*

In case of abatement, &c., of suit, an order may be made, which shall have same effect as a bill of revivor; 48.

New facts, &c., after commencement of suit, to be introduced as amendments to bill, &c.; 49.

6. *Accounts and Sales.*

Where account required to be taken, Court may give special directions as to the mode; 50.

Court may order real estate to be sold, if required; 51.

Before sale of estate, abstract of title to be laid before some conveyancing counsel; 52.

Where real or personal property is the subject of proceedings, Court may allow to parties part or the whole of the annual income; 53.

7. *Discovery and Injunctions.*

[Jurisdiction of Court of Chancery to compel discovery not to be exercised where suit commenced in Court of Law; 54.]

Practice of Court of Chancery as to injunctions still exercisable to be assimilated to special injunctions; 54.

Answer of defendant, on motion for injunction or receiver, to be regarded as an affidavit; 55.

In case directions as to practice, &c., not followed, Court of Chancery may make order and award costs; 56.

8. *Questions of Law.*

[Court of Chancery to have power to determine questions of Law; 57.]

Court may determine legal title of party seeking relief; 57.

Where defendant insists that plaintiff cannot recover on account of his estate being only equitable, Court may direct a case to be sent for the opinion of the Master of the Rolls or Vice-Chancellor; 58.

9. *General Rules and Orders.*

Lord Chancellor, &c., to make General Rules and Orders for carrying Act into effect; 59.

Such General Rules and Orders to be laid before Parliament; 60.

Construction of Act; 61.

Commencement of Act—1st Nov., 1852; 62.

The Schedule contains the Form of Indorsement on a bill of complaint and claim.

[The words in *italics* are new. Those within brackets were in the first Bill and are now omitted.]

ABOLITION OF THE OFFICE OF MASTER IN CHANCERY.

PETITION OF THE METROPOLITAN AND PROVINCIAL LAW ASSOCIATION.

THE following are the statements and suggestions in this petition which was presented on the 11th of May, and referred to the Select Committee of the House of Lords on the Bill:—

“That Solicitors are the persons individually selected by the suitors of the Court to represent them, and are personally intrusted with their interests, and are particularly acquainted with the detail of the proceedings of the High Court of Chancery, and, as such, your petitioners feel it their duty to state to your Right Honourable House their views upon the subject of the Bill now before your Right Honourable House, entitled, ‘An Act to abolish the office of Masters in Ordinary of the High Court of Chancery, and to make provisions for the more speedy and efficient despatch of business in the said Court.’

“That whilst your petitioners consider it essential to an effectual amendment of the practice of the Court of Chancery that the Judges of the Court should transact the business now referred to the Masters, yet it is the conviction of your petitioners, and they can confidently assert that it is the conviction of all Solicitors having an extensive experience in the working of suits, that while the said bill, if amended in the way hereinafter suggested, will be eminently calculated to render the administration of justice in the Court of Chancery both economical and expeditious, yet that, as it now stands, it will occasion serious injury to the suitors, and create much confusion in the business of the Court.

“That the Metropolitan and Provincial Law Association is a Society composed of Attorneys and Solicitors practising in England and Wales, whose objects are to promote the interest of suitors by the better and more economical administration of the law, and to maintain the rights and increase the usefulness of the Profession.

“That your petitioners are deeply interested in, and have been for several years endeavouring to promote, a thorough reform in the vari-

ous branches of the High Court of Chancery. Amongst other steps taken by them for that purpose, they, in the year 1849, prepared a draft Bill to remedy the evils arising from the system of proceeding in the Master's Office, which Bill was introduced by the Lord Brougham into, and passed by your Right Honourable House, in the following Session of Parliament, under the title of 'The Masters in Chancery Primary Jurisdiction Bill.'

"That in the year 1851 the Bill was again presented by the Lord Brougham to your Right Honourable House, and after being read twice, was committed to a Select Committee of your Lordships, before whom several of your petitioners gave evidence, which was printed by the order of your Right Honourable House; but the Bill was not proceeded with.

"That your petitioners would particularly refer to the evidence given by the Lord Brougham before the said Select Committee, and would state their entire concurrence therein; and, in particular, their concurrence in his opinion, that the proposed substitution of Judge for the Masters involves 'the necessity of a considerable increase of judicial force in the Court, and the cessation of the office of Master.'

"That all of your petitioners who were questioned on the subject by the said Select Committee were of opinion, that it would be better for the Judges to attend Chambers, to perform the work now done by the Masters, than to give primary jurisdiction to the Masters; and that one or other of the said measures was essential to the improvement of the practice of the Court.

"That in January, 1851, the Council of the Incorporated Society, in accordance with a suggestion from your petitioners, appointed a Committee, consisting of nearly thirty of the most active and influential solicitors, selected from their own board, from that of your petitioners, and from the general body of solicitors, to inquire into the practice of the Court of Chancery, and the best means of improving it.

"That this Committee prosecuted their labours actively throughout the year; and on the 2nd December last, completed their report, which has since been printed by the order of the Honourable the House of Commons.

"That the said report enters fully into the advantages of the plan of having the whole proceedings in a suit or matter under the control of one Judge, instead of the Judge deputed, as he now does, a most important part of his duties to a subordinate Judge.

"That your petitioners have carefully examined the provisions of the said Bill, now before your Right Honourable House, and that their objections thereto are that those provisions fall short of the recommendations of the above-mentioned report of the Incorporated Law Society, and the opinion of the Lord

Brougham, as to the necessity of increasing the judicial force of the Court.

"That, in discharge of that part of the business of the Court which must be dealt with in Chambers, it is quite essential that there should be, for some hours every day, or almost every day, a power of referring to the Judicial Head of the Office, whether he be Judge or Master.

"That the jurisdiction of Chief Clerks, as at present exercised, is not of any authority, but one of sufferance and consent, and yet that a large and important part of the Chamber practice of the Court is transacted by and before them, without, comparatively speaking, any appeals to the Master; and that the remarkable extent of concurrence on the part of the Profession, in these decisions of the Chief Clerks, is mainly owing to the immediate power which now exists, of reference or appeal from them to the Master, who is sitting in the next room.

"Your petitioners are therefore of opinion that it is not desirable that the Chief Clerk should have any authority independent of the Judge.

"That as the salaries received by the present Chief Clerks is a fixed sum, Parliament should, as your petitioners submit, at once fix the amount of compensation to such Chief Clerks as may be entitled to any under the Bill.

"That there are matters constantly occurring in a suit which would require, for their being efficiently disposed of, the attendance of a Judge at Chambers for a short time every business day, and for several hours during two or three days in the week.

"That for a full investigation of the evils arising to the suitor from the delays in bringing business to a hearing in open Court, and the encouragement afforded by such delays to litigious parties, your petitioners would refer to the important evidence taken before a Select Committee of your Right Honourable House, in the year 1840, on the Bill then before your Right Honourable House, entitled 'An Act for Facilitating the Administration of Justice,' and particularly to the evidence of the Right Honourable Sir James Wigram.

"That the present Judges are now fully occupied by their Court business, and that their Court business is not now as quickly brought to a hearing as the interests of the public require, and that, besides the delay that takes place in bringing on matters for hearing, the suitors often suffer grievous delay from the length of time that takes place between the hearing and the delivery by the Judge of his judgment, and that to remove the latter inconvenience, the Judges require greater time away from their Courts during the periods of sitting, than they have at present, that, therefore, the proposal of adding to the present duties of the Judges any of the duties of the Master's Office, without increasing their number, will, your petitioners greatly apprehend, most seriously impede the business done

in open Court, and practically put a stop to Chamber business.

"That for the above reasons, it was recommended in the above-mentioned report of the Committee, appointed by the Incorporated Law Society, and it is the opinion of your petitioners, the Bar, and of all practitioners of the Court, that the number of Judges should be increased to eight, two of such Judges being attached to each of the present Bars, and each Judge sitting on an average three days a week in open Court, and three days in each week in Chambers.

"That your petitioners have understood, that an opinion has been entertained, that by increasing the number of Judges, the difficulty occasioned by the present division of the Bar would be rendered greater. Your petitioners feel how essential it is to avoid such a result, but they respectfully submit, that the plan here proposed meets the objection, and that more fully to meet that objection, and to secure the public hearing of all matters requiring argument by counsel, your petitioners recommend, that whenever any matter arises in Chambers requiring such an argument, it should be put down on the paper for hearing in open Court.

"That the only other objections, your petitioners have heard against the proposal of at once appointing four additional Judges is the allegation, that it would impair the dignity of the office, and that it would cause great additional expense to the public.

"That the first of these objections your petitioners submit, on behalf of their clients, the suitors, even if well-founded, ought not to be taken into consideration when coming into competition with the interests of the suitors.

"That with regard to the second of the objections, referring to the increase of expense, setting aside the question of compensation, which is a temporary one, the salaries of four new Judges would be less than the salaries of the present Masters.

"That inasmuch as the business before the Superior Courts of Law is much diminished since the appointment of three additional Judges, your petitioners venture to suggest, it would save considerable expense if three of those Judges were appointed Judges of the Court of Chancery to carry out the objects of the said Bill.

"That the partial abolition of the Office of Master would, your petitioners fear, create difficulty, cause considerable delay and expense, and probably postpone indefinitely the advantages which the present suitors expect; that it would prevent the important principle of the Bill from having a fair trial, and bring it into discredit.

"That your petitioners consider that increased facilities would be afforded if all orders, whether made in Court or at Chambers, were drawn up by the registrars, and if one registrar were attached to each Judge, and formed part of his staff; also, if two or more junior clerks were appointed for each chief clerk, at the dis-

cretion of the Judge, and at such salaries as he should approve, provided that the total amount of salaries to be paid in each office should not exceed the sum of 600*l.*, or such other sum as to your Lordships may seem proper. That it would save some expense if the ushers and train-bearers of the Judges were made available as junior clerks, giving them, if needful, a fair increase to their salaries for any additional duties thrown upon them.

"That the Bill would be productive of much more extensive advantages to suitors if it were provided that, in any case in which a suit may now be instituted for the administration of any estate, or with respect to the appointment of guardian, or the allowance of maintenance to infants, and in such other cases as the Judge, in his discretion, should see fit, or the parties should agree, a simple application might be made to a Judge sitting at Chambers without filing a bill, petition, or claim.

The petitioners, therefore, pray "that the Bill may be amended as herein suggested, and especially by providing that the Office of Master may be at once abolished, and that the number of the Judges may be increased to eight, and that the Judge at Chambers may entertain applications, as above suggested, without a bill, petition, or claim."

PERPETUAL COMMISSIONERS.

Appointed under the Fines' and Recoveries' Act, with dates when gazetted.

Rogers, Charles, Manchester Buildings, Westminster, in and for the City of London, also in and for the City and Liberties of Westminster, and also in and for the Counties of Middlesex, Essex, Kent and Surrey. April 30.

Taylor, John, Bradford, Yorkshire, in and for the West Riding of the County of York. April 27.

Wilding, William, Montgomery, in and for the County of Montgomery, also in and for the County of Salop. May 11.

DISSOLUTIONS OF PROFESSIONAL PARTNERSHIPS.

From April 20th, to May 21st, 1852, both inclusive, with dates when gazetted.

Jobling, Mark Lambert, and John Fleming Newcastle-on-Tyne, Attorneys and Solicitors. May 14.

Kell, William Ghymes, and Alexander Chaffers, 43, Bedford Row, Attorneys and Solicitors. May 4.

Roberts, William, and Jeremiah Jones Thomas, Oswestry, Attorneys and Solicitors. April 27.

ATTORNEYS TO BE ADMITTED.*Trinity Term, 1852.**Students Names.**Clarks' Names and Residences.**To whom Articled, Assigned, &c..*

Abbott, Charles Edward, 28, Surrey-street; Cambridge-bridge-street; and Bury St. Edmunds	Charles Hinnell, Bury St. Edmunds
Andrews, Edward, 95, Guilford-street, Russell-square; and Cambridge	George Andrews, Weymouth; and Melcombe Regis
Armstrong, Charles, London-wall; and Norwood	George Walford Armstrong, Old Jewry
Arnison, William Burrs, 22, Great Percy-street, Pentonville; and Penrith	Lawrence Harrison, Penrith
Aston, David, 15, Burton-crescent; and Longton	George Lockett Robinson, Longton
Babington, John, 37, Store-st., Bedford-sq.; and Alfred-place	Edward Babington, Horncastle; James Scott, Lincoln's-inn-fields
Bailey, John Rand, Holford-square; Upper Vernon-st.; Wharton-st.; and North Leverton	George Marshall, East Retford
Baker, George, 5, Lowther-cottages, Holloway; Richmond-terrace; and Audlem	William Maslin, Audlem
Bannister, Henry, 66, Gibson-square, Islington; Baker-st., Lloyd-sq.; and Accrington	Robert Ascroft, Preston; George Bannister, Accrington
Barlow, Charles, Manchester	John Barlow, Manchester
Barr, Frederick Horatio, 32, Swinton-st., Gray's-inn-road	Frederic Talbot, Bedford-row
Barrett, Charles Prentice, 30, Burton-crescent; and Eton	Samuel Gwinnett Hornidge, Eton; and 38, Burton-crescent
Batten, James Brend, (articled as James Batten,) 30, Burton-st., Burton-crescent; Cheltenham	John Penrice Bell, Cheltenham
Baxter, Dudley, 15, Windsor-terrace, Pimlico; and Atherstone	Stafford Stratton Baxter, Atherstone
Baxter, Robert Dudley, Doncaster	Robert Baxter, Doncaster
Beaumont, Henry, 63, Trinity-sq., Staplehurst; and East Bridgeford	William Nash Ottaway, Staplehurst
Bickersteth, John Pares, Willesden; Liverpool; and Sefton	Richard Radcliffe, Liverpool; Andrew Tucker Squarey, Liverpool
Blagg, Michael Ward, 9, Hunter-st., Brunswick-sq.; and Cheadle	John Michael Blagg, Cheadle
Blick, John, jun., 3, Bury-place, Bloomsbury; and Dodderhill	Samuel Tombs, jun., Droitwich
Blyth, Edmund Kell, Upper Berkeley-st., West; Upper Charlotte-street; and Edgbaston	W. H. Rees, Birmingham; E. W. Field, Bedford-row
Booth, Samuel Barker, 51, Tavistock-square	Samuel Barker, Tavistock-square
Bridgman, Joseph, Chester	Samuel Johnson Roberts, Chester
Brown, Lancelot Charles, 4, Hakin-street, Belgrave-square	James Leman, Lincoln's-inn-fields
Brundrit, Robert Wright, Gray's-inn-square; South-bank, Runcorn; and Manchester	John Stevenson, Manchester
Buse, Rd. Hy., 23, Lawrence Pountney-la.; Stanhope-st.; and Bideford	William Henry English Burnard, Bideford
Butlin, Thomas, 24, Great Smith-street; Great College-street; and Cowley-street	George Eddowes, Nottingham
Capes, Henry Hawtley, Boroughbridge	William Hirst, Boroughbridge
Carnell, Geo. Frederick, 5, Newman's-row, Lincoln's-inn-fields; Bedford-sq.; and Sevenoaks	Thomas Carnell, Sevenoaks
Carrington, Charles James, 2, Cambridge-terrace, Islington; and Stretford, near Manchester	John Barlow, jun., Manchester
Cattlow, John Reynolds, 23, Calthorpe-street; Chadwell-street; and Greenhill	John Cattlow, Greenhill; W. H. Trinder, John-st., Bedford-row
Chamberlin, Charles Henry, Great Yarmouth	Henry Palmer, Great Yarmouth
Chayns, Talbot, Red-lion-st.; Hemingford-ter., Hemingford-cottages; and Highgate	L. Richmond, Ashton-under-Lyne
Christmas, Thomas Saunders, 2, Oakley-square, Chelsea; and Cambridge	Messrs. Ebenezer and Edmund Foster, Cambridge
Clark, John, 39, Lorn-road, Brixton	Wm. Dudley, 1, Anchor-terrace, Southwark
Clarke, George, 4, Devonshire-st.; 14, New Ormond-st.; and Worcester	Thomas Hyde, Worcester
Clarke, George Palmer, Wandsworth-common	Charles James Palmer, Bedford-row
Clements, Charles, 42, Kelham-place, Lambeth; and Liver pool	Thomas Toulmin, Liverpool
Coleman, John Sherard, 45, Westbourne-park-road, Baywater	Charles Richardson, Golden-square

Clerks' Names and Residences.

To whom Articled, Assigned, &c.

Conington, Henry James, Boston	Francis Thirkhill White, and Richard FydeLL Lind- say, Boston
Cook, Charles Henry, 4, Essex-court, Temple	Charles Cook, New-inn
Cooke, Thomas W. Tabourdin, 19, Store-street, Bedford-square	W. Everest, Epsom; J. Smith, Maidenhead; J. Currie, Lincoln's-inn-fields
Cooke, William Lawrence, 29, Cloudeley-square; and Cheltenham	Benjamin Bubb, Cheltenham; Edw. Washbourne, Gloucester
Courtenay, Richard, Lewisham and Lee	George Atkinson, Church-court, Lothbury
Crallan, Richard Nelson, Hornsey-lane, Highgate	W. Hodson, King's-road; J. Bridges, Red-lion-sq.
Cripps, William Charles, 17, Cecil-street; and Tonbridge	William Gorham, Tonbridge
Curtis, Charles John, 12, Great Titchfield-st.	Edmund George Randall, Welbeck-street
Curtis, Thomas John, 35, Holford-square	Charles Archer Curtis, Abingdon
Daubeny, Robert, 21, New Ormond-street; and Bristol	John Rocks Hoyte, Bristol
Derry, Wm. Smith, 6, Windsor-terrace, Vauxhall- road	Chas. Smale, Bideford
Drew, Charles Thomas, Balham-hill, Surrey	Stephens William, Bedford-row
Edell, James, Ivy-cottage, Barnes-common; and Minorities	Charles Harvey, Spalding; Laurence Desborough, Size-lane
Ellis, William Moreton, 9, Lower Calthorpe-st.; Walsall; and Sedgley	Horatio Barnett, Walsall
Elmsau, James Boys, Great Percy-st.; Bow-hill- terrace, North Brixton; Landport, near Lewes	Henry Whitmarsh, Battle and Rye; John Lewis, Lewes
Fowler, Robert, 8, Ebury-st., Chester-sq.; Elm- place; Trevor-sq.; and York	Geo. Leeman, York
Fox, John, jun., 24, Guildford-st., South-crescent; Ashborne; and Manchester	Jas. Saunders, Manchester; John Fox, Ashborne
Fryer, William, Dorset-cottages; Richmond-ter., Dalston; Chatteris; and Sandbach	William Latham, Sandbach
Gaiskell, Alfred Ashley, Streatham	T. Pryer, Artillery-place; W. S. Gaiskell, Upper Stamford-st; T. H. Devonshire, Austin Friars
Gall, Robert, jun., York	Geo. Leeman, York
Geoghegan, M. J., jun., 178, Regent-street	Walter Ephraim Goadly, Cork-street
Gillow, John, 11, New Ormond-street; Great Ormond-st.; and Cranbrook	Chas. Willis, Cranbrook
Gray, Charles Travers, [39, Keppel-street; and Woburn-place	Wm. G. Robinson, Bank-buildings
Hadfield, Samuel, 65, Bayham-street, South, Cam- den-town; and Manchester	Geo. Hadfield, Manchester
Hamber, Frederick Marsh, King's-arms-yard	Fred. Dimsdale, King's-arms-yard
Hammond, Henry, jun., Wentworth-lodge, Finchley	Hen. Hammond, sen., Furnival's-inn
Harris, John Henry, Clapham	W. G. Pennington, Sergeant's-inn; G. H. Williams, Margaret-st.
Hawley, Fred., 17, Shepperton-cottages, Islington	Nathaniel Overbury, Frederick's-place
Head, John Oswald, 8, Ampton-st., Gray's-inn- road; John-st.; and Richmond	Jas. Brown Simpson, Richmond
Head, Thomas Mangnall, 15, Arlington-street, Camden-town; and Wigan	Edward Scott, Wigan
Hewitt, William Henry, Ormonville, Higher Broughton; and Manchester	Robert Needham, late of Manchester; John Hewitt, Manchester
Hickley, Thomas Allen, Ivy-cottage, Barnes-com- mon; Fulham-pl.; and Paddington	Laurence Desborough, Size-lane
Hughes, George Martin, 32, Holford-square, Pen- tonville; and Yalding, Kent	Fred. Scudamore, Maidstone
Huxley, Frederick, 26, Camden-street, North, Cam- den-town; and Liverpool	John Buck Lloyd, Liverpool
James, Thomas Lloyd, 23, Ely-place, Hothorn	Edward Wallwyn James, Ely-place, Holborn
Jennings, Edward Billett, 28, Grove-pl., Brompton	Thomas Townsend Dibb, Leeds
Johns, Bradford, 16, Chadwell-street, Pentonville; and Muddleton-square	J. H. Todd, Winchester; E. Lyne, Liskeard; W. H. Brown, Swansea
Jones, James Webb, Surrey-street; Dorchester- place; Cecil-street; and Carmarthen	Philip Griffith Jones, Carmarthen
Jones, Thomas, Brecon	Hen. Maybery, Brecon
Kelsall, Frederick Henry, 14, Upper Porchester- street, Paddington	James Robinson, Liverpool
Kent, Benjamin, Newcastle-upon-Tyne	Newbigen Kent, Newcastle-upon-Tyne
Kent, Edmund, jun., 6, Albion-terrace, Syden- ham-park	Edmund Kent, sen., Bakersham
Kent, Thomas Russel, 71, Essex-street, Strand; Bath-place, Kensington	B. Blundell, Mitre-court-chambers; P. Nelson, Essex-street
King, William Henry, Phoebe-pl.; New Ormond- st.; Wakefield-st.; and Salisbury	Geo. Barnard Townsend, Salisbury

*Clerks' Names and Residences.**To whom Articled, Assigned, &c.*

Koe, Ralph Pemberton, Darlington; and Neasham	J. H. Mousley, Derby; F. Mewburn, jun., Darlington
Lett, Edward, 1, Stockwell-crescent, Stockwell	R. G. Burford, King's-bench-walk; E. Thompson, Salter's-hall
Maddox, John Mortimer, 18, Southampton-buildings; and Hornsey	C. I. Shirreff, Lincoln's-inn-fields; C. M. Stretton, Southampton-buildings
Mander, Charles John, 38, Ladbroke-square; Cordwainers'-hall; and Little Ealing	James Josiah Millard, Cordwainers'-hall
March, Owen, Newbury; Gloucester-place, Tachbrook-st.; and Taunton	Ernest Rossiter, Taunton
Marshall, John Stewart, 12, Ampthill-square; and Wigan	Ralph Leigh, Wigan
Mason, Wm. Ludlam, 8, St. Thomas-street, East, Southwark; and Louth	Thomas Phillips Waite, Louth
Mawson, William Willmott, Manchester	Thomas Taylor, Manchester
May, Henry, 4, Thorney-place, Oakley-sq., and Robert-street, Hampstead-road	John Fraser, Dean-street, Soho
Melmoth, William Toogood, 7, Mornington-place, Camberwell New-road; and New-inn	John Young Melmoth, Sherborne
Mayler, Thomas, Ashmeade-house, Gloucester; Amwell-street; and Lloyd-sq.	Robert Wilton, Gloucester
Minor, William, 12, Store-st., Bedford-square; and Cumberland-place	James Lane, Chancery-lane
Morres, Thomas Furlay, 9, Compton-street, East, Regent-sq.; Wells-st.; and Sidmouth-st.	J. R. Wheeler, Wokingham; J. S. Gregory, Bedford-row
Neeson, John, 3, Claremont-place, Dalston; and Doncaster	Frederick Fisher, Doncaster; Frederick W. Fisher, Doncaster
Newman, Charles, 127, Albany-st.; and Hemingfield	John Birks, Hemingfield
Norris, Henry, 22, Upper Gower-st., Bedford-sq.	Wm. Ruck, Lime-street
Page, William Sutton, 16, Soley-terrace; Stroud; Baker-st.; and Cambridge, near Dursley	William Thomas Paris, Stroud; Edwin Witchell, Stroud
Palmer, Gillies Charles, Grantham	Wm. Ostler, Grantham
Palmer, Robert, jun., 37, Maddox-st., Regent-street; and Stokesley	Geo. Grenside, Stokesley; Robt. Palmer, Stokesley
Parmer, Robert, Boolon-hall, near Reepham, Norfolk; and Chichester	R. F. Dalrymple, Parliament-st.; E. W. Johnson Chichester
Phillips, James, 7, Milton-terrace, Wandsworth-road Phillips, Thomas, 35, Cambridge-terr., Clapham-road; and the General Post-office	Henry Phillips, Size-lane
Phillips, William Henry, 39, Frederick-street; and Wolverhampton	Mark Beauchamp Peacock, General Post-office
Ponsonby, John, Oldham	Thomas Moss Phillips, Wolverhampton
Poole, Fenwick Thos., 12, Kennington-green; and Frome	James Hilton Hulme, Manchester
Preston, John, 31, Frederick-st., Gray's-inn-road; and Kirkby Lonsdale	Thomas Evered Poole, Frome
Raby, Richard Stephens, 28, Claremont-square; and Myddleton-square	Thomas Eastham, Kirkby Lonsdale
Reynolds, Reginald, 2, King-st., Portman-square; and Clifton	Christopher Childs, Liskeard
Rice, Francis John, 13, Clifford's-inn	Thomas Edwards, Bristol; Charles Edward Ward, Bristol
Roberts, Thomas, Chester	George Annesley, Lincoln's-inn-fields
Rodd, Richard Robinson, 2, Great Percy-street, Islington	Wm. H. T. Brown, Chester
Rutter, George, Manchester	Richard Rodd, East Stonehouse
Sabine, Chas. Edwyn, 23, Houghton-st., Strand; and Oswestry	E. C. Milne, Manchester; W. S. Rutter, Ditto
Salaman, Joseph Seymour, 36, Baker-street, Portman-square	Charles Sabine, Oswestry
Slater, William, jun., 2, Milman-st., Bedford-row; and Manchester	Thomas Tilson, Coleman-street
Smith, Sidney Philip, 6, Paradise-place, Stoke Newington	William Slater, Manchester
Smith, William, 21, New Ormond-st.; and Weston-super-Mare	Richard Edgar Smith, Serjeant's-inn; T. H. Street, Brabant-court
Standing, John, jun., 25, Forston-st., Hoxton; and Rochdale	Hen. Davies, Weston-super-Mare
Stansfield, John, 27, Great College-street, Westminster; and Todmorden	Hen. Whitehead, Rochdale
Stevenson, James Richard, 8, Ampton-st., Gray's-inn-road; King's-road; and Birkenhead	Thos. Edw. Hammerton, Todmorden
Steward, Fred. Fisher, 2, Cambridge-ter.; Whitehaven; and Great Ormond-st.	Charles Falcon, Liverpool
	H. Perry, Whitehaven; W. Perry, Ditto; G. Halder, Great James-st.

Clerks' Names and Residences.

Stone, William Way, 16, Great Ormond-street
 Stubbs, Edward Phillips, 55, Grove-pl., Brompton
 Suckling, John, jun., 13, Dalby-terrace, City-road;
 and Birmingham

Talley, William, 4, Spencer-st.; Garnault-place;
 and the Briars, near Exeter

Teebay, Richard, Everton, near Liverpool
 Thistlethwaite, Wm., jun., 2, Cowley-st., Titch-
 borne-street; and Furnival's-inn

Thomas, William Thos., 15, Union-st., Carmarthen
 Turner, Geo., 2, Great Percy-st.; and Great Tor-
 rington

Turner, Hubert Francis, Kilburn

Utterton, Edwin, Earl's-wood, Reigate
 Warden, George, 8, Shaftesbury-crescent, Pimlico;
 Kenton-st.; and Edgbaston

Waterhouse, Robert, jun., 61, Acton-st., Gray's-
 inn-road; and Sheffield

Wates, Edw., Gravesend

Wagh, Geo., jun., Worthing

Weekes, Chas. Henry, 4, High-st., Bloomsbury;
 and Lamerton

Welford, Thomas William, Hexham; and New-
 castle-upon-Tyne

Westall, Harry John, Herne-hill; Rodney-terr.;
 and Frome

Whitefield, John Chas., 34, Penton-pl., Penton-
 ville; Cumberland-terrace; and Bristol

Wilkinson, John, 7, Maddox-street, York

Williams, William Benman, Corwen, Merioneth

Wilson, Jonathan, 1, Ampton-st.; Lloyd-square;
 and Tunbridge-wells

Wilton, Thomas, Bilston

Winterbotham, William, 2, Burton-crescent; and
 Cheltenham

Wrattislaw, Theodore Marc, 6, South-st.; Middle
 Queen's-buildings; and Rugby

Wright, John, 5, Alfred-pl., Brompton; Halsey-st.;
 and Macclesfield

To whom Articled, Assigned, &c.

Jos. Rose, Aylesbury; Richd. Rose, Ditto
 Frederick Scudamore, Maidstone

John Suckling, Birmingham
 Wm. Burriddle, Wellington; Robert Thomas Head,
 Exeter

John Yates, Liverpool
 John Fearenside, Barton; Joseph Raw, Furnival's-
 inn

Lewis Morris, Carmarthen
 W. A. Deane, Great Torrington; F. J. Cotton,
 King's-arms-yard

William Furner, Brighton; George Mounsey Gray,
 Staple-inn

Messrs. Dawes and Sons, Angel-court

John Suckling, Birmingham

Edward Bramley, Sheffield
 G. Crafter, Blackfriars-road; E. B. Hooke, Brabant-
 court

G. Waugh, sen., Great James-st.; R. Edmunds,
 Worthing

G. W. Snell, Callington; J. V. Bridgman, Tavistock

Edward Davison Welford, Newcastle-upon-Tyne
 W. C. Cruttwell, Frome; J. W. D. T. Wickham,
 Frome

W. Gresham, Castle-st., Holborn; W. B. Cooper,
 Hatton-garden; G. W. Whitaker, Heathcote-
 st.; W. Bartholomew, Gray's-inn; W. Bevan,
 Bristol

Wm. Gray, York

David Smart, Ruthin, Denbighshire; Edward Wal-
 ker, Corwen

Wm. Stone, Tunbridge-wells

John Willim, Bilston

John Brend Winterbotham, Cheltenham

W. F. Wrattislaw, Rugby; C. P. Allen, Carlisle-
 street

Edward Procter, Macclesfield

*Added to the List pursuant**to Judge's Orders.*

Barker, Charles Munro, Sunderland

Joseph John Wright, Sunderland

Cobby, Cecil, 10, Warwick-court, Holborn; and
 Brighton

Charles Cobby, Brighton

Edwards, Henry Richard, Farlington-house, near
 Havant; and Scilly Islands

Timothy Surr, Lombard-street

James, Thomas, Huntingdon; and 15, Manor-pl.,
 North, Chelsea

William Fowler, Huntingdon

Mossman, Geo. R., jun., Bradford, Yorkshire

George Robert Mossman, Bradford

Naters, Henry Trewhitt, Nassau-street, Soho;
 Sunderland; and Dorchester-place

G. W. Wright, Sunderland; F. Turner, Alderman-
 bury

Overton, Edw. Fras., 15, Green-terrace, Clerken-
 well; and Lanthetty-hall, Brecon

George Overton, Merthyr Tydfil

Pickard, Hugh Powell, Briar-cottage, Putney;
 and Dderw-house

J. Roberts, Truro; B. P. Sqaunce, Coleman-st.;
 E. Williams, Rhayader

Selby, James Addison, 17, Clifford's-inn; East-
 street, Albany-street; and West Malling

Thos. Selby, West Malling

Snowball, George, Sunderland

George Walton Wright, Sunderland

Taylor, Matthew William, 2, Benyon-cottages, De
 Beauvoir-town; and Englefield-cottages

R. W. F. Beioley, Old Jewry-chambers; H. W. Val-
 lance, Tokenhouse-yard; W. Cox, Pinner's-hall

TRINITY TERM EXAMINATION.

THE printed List of Candidates for the Roll of Attorneys in the present Term, shows as usual, a much larger number than will be examined. Of 163 in the list, 63 have been already examined and passed. Then there are several who have given notices of examination, but not of admission, and some have omitted to serve notices of examination. Reckoning the usual proportion of absentees and unsuccessful applicants, the number who may be expected to pass will probably be considerably less than 100.

The Senior Master of the Common Pleas will preside at the examination.

Thursday, the 3rd June, at half-past nine, is the time appointed for the attendance of the candidates. The examination will commence at 10 o'clock precisely.

NOTES OF THE WEEK.

LAW PROMOTIONS.

THE Queen has been pleased to grant the place of one of the Lords of Session in Scot-

land to *Adam Anderson, Esq.*, her Majesty's Advocate-General for Scotland, in the room of *Duncan McNeill, Esq.*, resigned.

The Queen has also been pleased to nominate and appoint the said *Adam Anderson* to be one of the Lords of Justiciary in Scotland, in the room of the said *Duncan McNeill*.

The Queen has been pleased to grant the office of her Majesty's Advocate for Scotland to *John Inglis, Esq.*, her Majesty's Solicitor-General for Scotland, in the room of *Adam Anderson, Esq.*, appointed a Lord of Session and of Justiciary in Scotland.—From the *London Gazette* of 21st May.

The Queen has been pleased to grant the office of Solicitor-General for Scotland to *Charles Neaves, Esq.*, Advocate, in the room of *John Inglis, Esq.*, appointed her Majesty's Advocate for Scotland.—From the *London Gazette* of 23rd May.

NEW MEMBER OF PARLIAMENT.

Charles William Trenfell, Esq., for New Windsor, in the room of *George Alexander Reid, Esq.*, deceased.

RECENT DECISIONS IN THE SUPERIOR COURTS,
AND SHORT NOTES OF CASES.

Lord Chancellor.

In re Oxford and Worcester Extension, and Chester Junction Railway Company, ex parte Sharp: Ex parte James. April 15, 21, 1852.

WINDING-UP ACT.—CONTRIBUTORY.—MANAGING COMMITTEE-MAN.—NON-ACCEPTANCE OF ALLOTTED SHARES.

A. and B. were provisional directors and managing committee-men in a projected railway scheme, and executed the deed of settlement in respect of 100 shares each, which were allotted to them, as a portion of 500 reserved for each of the managing committee under a resolution, but it appeared they had never accepted the shares so reserved: Held, that A. and B. were only liable in respect of the 100 shares, which had been accepted by them.

The decision of Vice-Chancellor Knight Bruce in *Ex parte Morrison*, 20 Law Jour., N. S., Chan., 296, overruled.

THIS was an appeal, by leave, from an order of the Master, inserting the names of Major Sharp and Mr. James on the list of contributors to the above company, in respect of 500 shares each. It appeared that the appellants were members of the provisional and managing committees, and that a letter had been sent to each by the secretary in September, 1845, stating, that "250 shares or any less number" would be reserved for them, as such provisional committee-men, and 250 shares in addition as members of the managing committee. It also appeared, that in October another letter was sent by the secretary, inclosing an allotment for 100 shares, as provisional committee-men, and stating that he was instructed to acquaint them, that if when the committee should have made their arrangements, they found

themselves enabled to comply with the original intention of apportioning them the whole number of shares, they would be happy to do so. The appellants had executed the deed in respect of the 100 shares so allotted, in pursuance of a resolution requesting them to execute it without delay. There had been no acceptance of any other than these 100 shares.

Daniel and Terrell in support of the appeal; *Cairns*, for the official manager, contra.

See *In re Oxford and Worcester Extension and Chester Junction Railway Company, ex parte Morrison*, 20 Law Jour., N. S., Ch 296; *In re Same, ex parte Barber*, ib. 146; *Hutton v. Upfill*, 2 H. of L. 674.

Cur. ad. vult.

The Lord Chancellor said, that although there had been an offer of 500 shares, there was no proof whatever of acceptance, or that the directors had received them. The appeal was with a view of questioning the decision of the Vice-Chancellor Knight Bruce in *Ex parte Morrison*, in which it had been held, that the managing directors were liable in respect of the whole number of shares reserved for them, and which proceeded on the decision of *Hutton v. Upfill*. The circumstances, however, in the latter case were different, inasmuch as there were letters which passed between the parties which amounted to a contract, binding Mr. Upfill, and which were wanting in the present case, and it also appeared that in that case the directors were authorised to incur expenses before the Act of Parliament was obtained. The appellants were therefore liable only in respect of the 100 shares, which they had accepted.

May 22, 26.—*Lumley v. Wagner and others*—Appeal dismissed, with costs, from Vice-Chancellor Parker.

Lords Justices.

Esparle Glyn and others, in re Ashlin. April 30; May 1, 8, 1852.

BANKRUPT LAW CONSOLIDATION ACT.—PERCENTAGE TO CHIEF REGISTRAR'S ACCOUNT.—REMUNERATION TO OFFICIAL ASSIGNEE.

The official assignee had received, in various amounts, the assets of a bankrupt, and which amounted in the whole to 20,928l. odd: Held, confirming the order of Mr. Commissioner Goulburn, that he had properly paid, under the order made by the Chief Commissioner and approved by the Lord Chancellor, in pursuance of the 12 & 13 Vict. c. 106, s. 54, the following per-centage to the Chief Registrar's Account: 5l. per cent. on 500l.; 3l. on 4,500l.; 2l. 10s. on 5,000l.; 1l. on 10,000l.; and 10s. on 928l. odd.

Held also, referring back to the Commissioner the consideration of the amount of allowance to the official assignee under sect. 44, that such allowance was to be calculated, having regard to the particular bankruptcy and not to any general scale.

THIS was an appeal from the decision of Mr. Commissioner Goulburn, approving of the percentage which had been paid to the Chief Registrar's Account, in respect of the assets of this bankrupt's estate. It appeared that the gross receipts amounted to 20,928l. odd, and had been received in the following sums:—15,539l. odd, 1,037l., 663l., 444l. odd, 1,257l. odd, 1,195l. odd, 43l. odd, and 750l. The per-centage had been calculated as follows:—5l. on 500l., 3l. on 4,500l., 2l. 10s. on 5,000l., 1l. on 10,000l., 10s. on 928l. odd. The rates directed to be charged under the 12 & 13 Vict. c. 106, s. 54, by the Chief Commissioner and approved by the Lord Chancellor, were: "upon the first moneys of such gross produce not exceeding 500l., 5 per cent.;" "upon all further moneys of such gross produce, above 500l. and not exceeding 5,000l., 3 per cent.;" "upon all further moneys of such gross produce, above 5,000l. and not exceeding 10,000l., 2½ per cent.;" "upon all further moneys of such gross produce, above 10,000l. and not exceeding 20,000l., 1 per cent.;" "upon all further moneys of such gross produce, above 20,000l. and not exceeding 30,000l., ½ per cent."

An objection was also taken to the amount allowed to the official assignee, who had received 173l. 16s. 2d., as charges in respect of the receipts, 20l. for investigating the accounts, and 169l. 15s. 1d. for dividing the assets among 33 creditors.

Swanston and Selwyn in support of the petition; *Russell and Willes* for the official assignee; *Daniel and Hopwood* for the Accountant in Bankruptcy, were not called upon.

The *Lords Justices* held, that the scale of per-centage was correct, according to the plain meaning of the order made under sect. 54. Upon the question of the allowance to the official assignee, after taking time to consider, their Lordships held, that it was excessive,

having regard to the circumstances of the particular bankruptcy, and the matter was accordingly referred back to the Commissioner.¹

May 22.—*Esparle Yelland, in re Port of London Shipowners' Loan and Assurance Company*—Appeal dismissed, with costs, from Vice-Chancellor Parker.

— 22.—*Brooke v. Horn*—Bill dismissed, without costs.

— 22.—*Esparle Riddle v. Shrewsbury and Leicester Railway Company*—Action to be brought at law.

— 25.—*Foley v. Smith*—Decree varied of the Master of the Rolls.

— 25.—*Newman v. Hutton*—Part heard.

Master of the Rolls.

Butterfield v. Heath. Feb. 19; April 15, 1852.

SPECIFIC PERFORMANCE OF CONTRACT.—REPORT OF GOOD TITLE.—EXCEPTIONS.

Certain freehold property, to which a married woman became entitled, was by deed of settlement (duly acknowledged according to the statute) conveyed to trustees in trust to the husband for life, with remainder to the wife for life, with remainder to the children of the marriage, or, in default of issue, to the husband in fee. By a subsequent deed (also duly acknowledged) the property was conveyed to trustees for sale and to pay the proceeds to the husband's creditors. Exceptions taken to the Master's report, approving of the title, by a purchaser under the latter deed, were overruled, with costs, in a suit for the specific performance of a contract for the purchase of the property.

Walpole and Hadden appeared in support of exceptions which were taken to the Master's report finding that a good title could be made to certain freehold property, the subject of articles of agreement, dated in Aug., 1850, for the purchase by the defendant from the plaintiffs. It appeared, that by an indenture dated in Feb., 1839, and duly acknowledged by Mrs. Phillips, the property in question was conveyed to trustees in trust for her husband for life, with remainder to herself for life, with remainder to the children of the marriage, and in default of issue, to the husband in fee. The property was in May, 1848, mortgaged to secure a sum of 2,500l. to a Mr. Veitch, and in December, 1849, conveyed to the plaintiffs as trustees for sale and to distribute the proceeds to Mr. Phillips' creditors, in consideration of their releasing him from the debts due and owing them by him. Mr. and Mrs. Phillips were parties to the deed, and it was duly acknowledged by the latter.

¹ By sect. 44 it is enacted, that "the Court may order and allow to be paid out of any bankrupt's estate, to the official assignee thereof, as a remuneration for his services, such sum as shall, upon consideration of the amount of the bankrupt's property, and the nature of the duties performed by such official assignee, appear to be just and reasonable."

The defendant having contracted to purchase under the deed of 1848, an objection as to the title was set up of the previous deed of Feb., 1839, but which was overruled by the Master. *Rouppell and Younge, contra.*

The Master of the Rolls held, that the deed of Feb., 1839, did not impair the title as against the subsequent purchasers for value under the second deed, and the exceptions were therefore overruled, with costs.

May 22.—*Attorney-General v. Haberdashers' Company*—Declaration that appearance of solicitors on behalf of Attorney-General since the decease of the relator was irregular and improper.

—22.—*Prosser v. Morrison and others*—Ex parte injunction refused, with leave to give short notice of motion.

—22.—*Montagu v. Montagu*—Judgment as to construction of settlement and effect of will and codicils.

—24.—*Bryan v. Collins*—Judgment on construction of will.

—24.—*Smith v. Parkes*—Injunction granted to restrain action at law upon payment of money into Court.

—25.—*Parkin v. Thorold*—Decree for specific performance of contract.

—25.—*In re Proctor v. Proctor, ex parte Messenger*—Petition refused for reference as to parties entitled under will.

—25.—*Brown v. Gordon*—Cur. ad. vult.

—25.—*Mitchell v. Beaumont*—Part heard.

Vice-Chancellor Turner.

Gregory v. Smith. April 27, 28; May 4, 1852.

WILL.—BEQUEST NOT VOID FOR UNCERTAINTY.—JOINT TENANCY.—“FAMILIES.”

A testator devised his residuary estate, subject to two life interests, “to the families of Gregory and Gear,” and the Master reported that the testator’s uncle and aunt were meant thereby: Held, that the bequest was not void for uncertainty, and that the children of the uncle and of the aunt who survived the tenant for life were entitled as joint tenants, and that the representatives of the two deceased children took no interest in the property.

THE testator, Alexander Wornall, by his will gave his residuary estate to his father and widow for their lives, and after their deaths to “the families of Gregory and Gear.” The Master found that the testator meant his uncle, George Gregory, and his aunt, Mary Gear. It appeared that at the date of the will and the testator’s death they each had six children, but that two of such children had died leaving issue during the life of the testator’s widow who survived his father.

Humphry for the plaintiffs, the surviving children; *W. R. Ellis* and *Charles Hall* for the representatives of the deceased children, contended that the will created a tenancy in common; *Drewry*, for the testator’s next of kin,

urged that the gift was unintelligible and void for uncertainty; *Bichner* for other parties.

The Vice-Chancellor, after taking time to consider, said, that the bequest was not void for uncertainty, but that the surviving children at the death of the tenant for life were entitled to the property as joint tenants.

May 22, 24.—*Sheffield United Gas Light Company v. Sheffield Gas Consumers’ Company*—Injunction refused.

—25.—*Goodchap v. Weaving and others.*—Stand over.

Vice-Chancellor Kindersley.

Wiggins v. Wiggins. May 1, 1852.

WILL.—CONSTRUCTION.—PROVISION IN EVENT OF WIDOW MARRYING.

A testator gave certain of his personal estate and all other his effects to his wife for life, or while she should remain his widow, and after her decease or if she should again marry, to all the children he then had or might thereafter have. By a subsequent clause he declared, that if his wife should not again marry, he gave at her death all his personal effects whatsoever to such of his children as should be then living: Held, that the first clause only applied if his wife again married, and the second if she remained unmarried, and that the three surviving children at her death were entitled thereunder, and that the representatives of the three who died in her lifetime took no interest.

By his will, the testator devised his personal estate, therein mentioned, and all other his effects, to his wife for life or so long as she should remain unmarried, and upon her death or marriage he gave the same and his furniture to all the children which he then had or might thereafter have. He then directed, that if his wife should not again marry, she should enjoy all his personal effects whatsoever for life, and after her death the same to go to such of them as should be then living. It appeared that there were six children at the testator’s death, and that his wife died without having again married and leaving three of the children her surviving.

Malins and *Eddis* for the three children; *Chandless* and *Fisher* for the representatives of the deceased children.

The Vice-Chancellor said, the first clause was intended to apply in case the widow again married, and the second if she remained unmarried. And that the three surviving children were entitled thereunder, and the representatives of the children who died in her lifetime took no interest.

May 24.—*Longstaff v. Rennison*—Judgment on construction of will.

—24, 25.—*Wright v. Vernon*—Cause to be struck out of the paper, with costs of the day.

—25.—*Appleyard v. Holt*—Motion refused,

with costs, to discharge order discharging writ of *ne exeat regno*, with costs, and reference to the Master as to the damage sustained by defendant.

May 25.—*Campbell v. Hewlett*—Judgment on exceptions to answer.

Vice-Chancellor Parker.

Calhoun v. Bridger. May 1, 1852.

PETITION FOR MARSHALLING ASSETS ON BEHALF OF DEVISEES OF EQUITY OF REDEMPTION.

The Court refused on petition on behalf of the devisees of the equity of redemption in fee of an undivided moiety of real property, who had paid off the arrears of interest due on the mortgage, to marshal the assets between the legal and personal estate, for the discharge of the interest so paid and the mortgage debt, although the petitioners undertook that all necessary parties should be brought before the Court.

This was a petition on behalf of devisees in fee of an undivided moiety of the equity of redemption of certain real estate, who had paid off the arrears of interest due on the mortgage, and sought to have the interest so paid allowed, and the mortgage debt discharged out of the personal estate of the testator, and to have the assets marshalled for the purpose. A creditor's suit had been instituted.

Malins and Haldane for the petitioners, in support, undertook that all necessary parties should be brought before the Court; *Piggott*, for the plaintiff; *Wigram*, for the executors, contra.

The Vice-Chancellor said, that as what was asked involved more than the mere debt, and sought to administer an equity, it could not be done on petition, which must therefore be dismissed.

May 22.—*In re Metropolitan Junction Railway Company*, *ex parte Markwell*—Motion to remove name from list of contributories refused, with costs.

—24.—*Howard v. Wheatley*—Petition refused for leave to go in before Master and prove as creditor of testator.

—25.—*Bostock v. North Staffordshire Railway Company*—Stand over for trial of issue at law.

Court of Queen's Bench.

Regina v. Hull Dock Company. April 21, 1852.

DOCK COMPANY.—LIABILITY TO BE RATED TO THE POOR ACCORDING TO ACREAGE IN RESPECTIVE PARISHES.

The Hull Dock Company consisted of three docks, at one of which—the Victoria Dock—all the dues were taken upon the vessels entering and which was situate in the parish of D.: Held, that that dock was liable to be rated to the poor of the parish of D. in proportion to the acreage it bore to that of

the other docks, and the rate assessing the value on the dues received in that dock was therefore directed to be amended.

It appeared that the Hull Dock Company included three docks, and that the toll in respect of all the docks was taken upon vessels going into the Victoria Dock, which was in the parish of Drypool, but that the vessels were removable therefrom into the several docks at the discretion of the officer of the Trinity House.

Watson, Q. C., for the parish, contended the company were liable to be assessed to the poor-rate in respect of all the earnings made in the dock situate in the parish; *Hall* and *T. C. Foster* for the company.

The Court held, that all the docks must, for the purpose of rating, be treated as one dock, and that the rateable value of the dock in the parish in question was to be in proportion to its acreage to the other docks, and that the rate must therefore be amended.

May 22.—*Bastow v. Gant*, administrator—Rule refused to set aside Judge's order.

—22.—*Mardell v. Thellusson and others*—Rule absolute to enter verdict for defendants on the second count.

—22.—*Same v. Same*—*Cur. ad. vult.*

—22.—*Regina v. London and North Western Railway Company*—Rule nisi for mandamus on defendants to complete branch line.

—22.—*Regina v. Sill*—Rule for *certiorari* to remove indictment into this Court.

—22, 24.—*Cobbett v. Hudson*—Rule refused for new trial on the ground of improper admission of evidence, and on the ground of right of plaintiff conducting his case in person to be examined—Rule nisi.

—24.—*In re Pollard*—Rule nisi to quash order for appointment of overseer.

—25.—*Barnes v. Marshall*—Rule nisi for prohibition to Judge of Wiltshire County Court at Swindon.

—25.—*In re Kent Mutual Fire Insurance Society*—Rule nisi for mandamus on Registrar of Friendly Societies to certify an amended rule of society.

Queen's Bench Practice Court.

May 22.—*Ex parte Stevens*—Rule nisi on attorney to pay over moneys and answer matters in affidavit.

—24.—*Regina v. Commissioners of Inland Revenue*—Rule nisi for mandamus on defendants to pay drawback on bricks, under 13 Vict. c. 9, s. 2.

Common Pleas.

Grisewood v. Blane. April 19, 1852.

STOCK-JOBBER ACT.—ACTION ON CONTRACT FOR SALE OF RAILWAY STOCK.—TIME BARGAINS.

To an action to recover the amount of differences on the sale of railway stock, the defendant pleaded that the contract was a wagering on the price of shares, and was

merely colourable and a contrivance to conceal the wager and come within the provisions of the 8 & 9 Vict. s. 18. The evidence showed the contract was in respect of time bargains, and the presiding Judge left it to the jury to say whether this was not a gambling transaction, and directed them that if neither party intended to buy or sell the shares, it was a gambling transaction: Held, no misdirection, and a rule nisi was refused to enter the verdict for the plaintiff non obstante veredicto.

THIS was a motion for a rule nisi to enter the verdict for the plaintiff non obstante veredicto in this action, which was brought to recover the amount of differences in a transaction relating to the sale of certain railway stock. The defendant pleaded that the transaction in question was a contract by way of wagering on the prices of shares, and was merely colourable and a contrivance to conceal the wager, and that it was never intended the shares should be bought, sold, delivered, and paid for, but came within the provisions of the 8 & 9 Vict. c. 109, s. 18, which enacts, that "all contracts or agreements, whether by parol or in writing, by way of gaming or wagering, shall be null and void." On the trial before L. C. J. Jervis, at the Sittings in London, after Hilary Term last, his lordship left it to the jury to say whether this was a gambling transaction, directing them that if neither party intended to buy or sell the shares, it was a gambling transaction within the statute, and the defendant having obtained a verdict,

Byles, S. L., now moved for this rule.

The Court said, that it was shown by the evidence that there was a mutual understanding between the plaintiff and the defendant, that the contract of sale was nominal, and the jury were quite right in finding as they did, and that there had been no misdirection. The rule was, therefore, refused.

May 22.—*Clinch v. Williams*—Rule nisi to enter verdict for defendant.

— 25.—*Johnson v. Lansley*—Rule nisi to enter verdict for defendant.

Court of Exchequer.

Justices of Bedfordshire and others v. Churchwardens, &c., of St. Paul's, Bedford. April 28, 1852.

POOR-RATE.—LIABILITY OF HOUSES IN OCCUPATION OF GOVERNOR AND WARDERS OF PRISON TO BE RATED.

Held, that the premises occupied by the governor and warders of a prison are not liable to be rated to the poor-rate, although such premises are outside the prison, but immediately in contact with the prison walls.

THIS was a special case under the 12 & 13 Vict. c. 46, as to whether certain houses occupied by the governor and warders of the county gaol were liable to be rated to the poor

of the parish of St. Paul's, Bedford, as farming part of the gaol. The houses in question were erected, upon the gaol's being enlarged and rebuilt, outside and immediately in contact with the prison walls on each side of the entrance to the prison.

Worlledge and H. Mills in support of the rate; Tozer and Pearce, contra, citing *Regina v. Shepherd*, 1 Q. B. 170.

The Court, upon the authority of the case cited, gave judgment for the appellants, with costs.

May 22.—*Grinham and another v. Card and others*—Rule absolute for prohibition to County Court Judge from proceeding herein.

— 22.—*Wallington v. Dale*—Rule discharged for new trial.

— 22.—*Rothschild v. Royal Mail Steam Packet Company*—Judgment for plaintiff.

— 22.—*Blackstone v. Jennings*—Rule discharged with costs on attorney to render account of moneys.

— 22, 24.—*Michelson v. Nicholl*—Cur. ad. vult.

— 24.—*Maddon v. Lancaster*—Rule discharged for new trial.

— 25.—*Davis v. Collins*—Rule refused for new trial.

— 25.—*Cook v. Batty*—Stand over.

— 25.—*Hill v. Philp*—Cur. ad. vult.

— 25.—*In re Cobbett*—Rule refused for *habeas corpus*.

Court of Exchequer Chamber.

Regina v. Smith. April 24, 1852.

INDICTMENT FOR STEALING RECEIPT STAMP.—WHAT INSUFFICIENT POSSESSION TO SUPPORT CONVICTION.

A conviction was quashed for stealing a receipt stamp by a prisoner who owed the prosecutor a sum of money for wages, and had agreed to pay the same, but who had, upon the receipt being made out, taken it and refused either to return it, or to pay the amount due, to the prosecutor.

THIS was an indictment for having stolen a receipt stamp. It appeared that the prosecutor was in the prisoner's employ as time-keeper, and that there was a balance due to him for wages of 4l. odd, which the prisoner, after having several times been requested to pay, agreed to settle. The prosecutor filled up a sixpenny stamp for the amount, when the prisoner took it in his hand and refused either to pay the money or return the receipt.

On the trial at the last Swansea Epiphany Sessions, the prisoner was convicted, subject to the question whether the prosecutor had such property and possession in the receipt as to enable him to support the conviction.

Terry in support.

The Court said, that although the prisoner's conduct was fraudulent, it did not amount to an offence punishable at law, and the conviction was accordingly quashed.

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SATURDAY, JUNE 5, 1852.  
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COMMON LAW PROCEDURE BILL.

AMENDMENTS OF COMMITTEE.

THIS important measure, which was framed with the intention of effecting an extensive *change*—perhaps we should be justified in substituting the word *revolution*—in the whole system of Common Law Practice and Pleading, after being referred to a Select Committee of the House of Lords, at an early period of the Session, has at length found its way to the House of Commons, supported by the unanimous sanction and approval of the Law Lords, and unless it should miscarry from some accidental circumstance, wholly irrespective of its merits, will probably be the only binding authority upon matters of Common Law Practice on the first day of Michaelmas next, when it is expected to come into full operation. The nature and scope of the alterations proposed to be introduced by the Bill, have been repeatedly adverted to and discussed in these pages, and it is now intended only to direct attention to the amendments of an important character made in Committee and subsequently adopted by the House of Peers.

Some provisions, relating to warrants founded upon writs of execution, and the proceedings in the action of ejectment, were submitted by Lords Truro and Denman respectively, on the occasion when the Bill was read a third time in the House of Lords, but these amendments were not, as erroneously announced in the newspaper reports, adopted, but the proposed clauses were withdrawn by the noble movers, upon the understanding that they would be brought forward in the next Session of Parliament and embodied in a substantive measure.

The Bill which is now before the House
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of Commons has been considerably reduced in bulk since it was first printed, and contains 229, instead of 280 sections. The instances are not numerous in which fresh clauses have been introduced, but many sections have been struck out by the Select Committee. For example, the Bill, as it was read a second time, proposed to abolish the various forms of action, and to declare, that a statement of the cause of action good in substance should be sufficient without adherence to any particular form of action, and then followed a series of clauses professedly framed with a view of precluding the doubts that may arise from the disuse of the technical forms of action heretofore adopted. The Select Committee disapproved of the clause rendering adherence to the technical forms of action unnecessary, and consequently the various sections intended to prevent the abolition of established forms from operating unjustly became superfluous and are omitted. The section is retained, however, by which it is enacted, that different causes of action by and against the same parties and in the same right may be united in the same suit, but is provided that this shall not extend to replevin or ejectment, which, as our readers are aware, are wholly anomalous proceedings. It is also enacted, that pleas good in substance are not to be deemed objectionable, because they treat the declaration as framed for a breach of contract or a tort.

The clauses relating to the joinder of parties in Common Law actions, which were the subject of lengthened explanation and commentary in a former Number, (vol. 43, p. 426,) have now been reduced, simplified, and we venture to think materially improved. The clause providing that the joinder of too many plaintiffs should not be fatal, but that the plaintiffs entitled may recover, and the defendant have the benefit

of any defence available if the action had been originally brought by the proper plaintiffs, is omitted, but power is given to the Court and Judge to amend before or at the trial in every case in which there has been a nonjoinder or a misjoinder of plaintiffs. In like manner the joinder of too many defendants may be amended before or at the trial.

With respect to the language and form of pleading in general, as the Select Committee deemed it expedient that the technical language of pleading should not be abolished, and that assumpsit, debt, trespass, covenant, and case, should not in future be mere unmeaning words, it of course became necessary to reject the provision which declared, that pleadings good in substance should be sufficient, without regard to language or manner. The only cases, however, in which pleadings are to be deemed insufficient for defects which could heretofore only be objected to by special demurrer, are those provided for by the following section, which as it is new as well in structure as effect, is copied without abridgment :—

“The pleadings in any action may be objected to by special demurrer, on the grounds of duplicity, argumentativeness, or uncertainty, if the effect of such duplicity, argumentativeness, or uncertainty shall be to embarrass or mislead the opposite party, and upon the argument of such special demurrer the Court shall give judgment according to the validity or invalidity of the objections taken by such special demurrer, (in which respect such judgment shall not be subject to be reversed on error,) and according to the substance of the pleadings, or shall give leave to amend on such terms as shall seem fit to such Court, and the judgment of the Court shall be so entered upon the record, that it shall appear whether such judgment proceeds upon the sufficiency or insufficiency of the pleadings in substance, or upon the sufficiency or insufficiency of the objection taken by such special demurrer.”

On the whole, it may be considered, perhaps, that the Law Lords have dealt more tenderly and indulgently with the long established and much abused system of pleading, than those who framed the present Bill. Many of our readers are competent to judge whether the *abuses* of pleading have not been at least as effectively dealt with by the amended Bill.

The Select Committee have struck out of the Bill the important clause which repealed so much of any Act of Parliament as entitled parties to plead the general issue and give the special matter in evidence under that plea. The reasons which induced their lordships to come to this determination, are

not so manifest, as in many other of the instances in which the Bill has been amended.

Towards the conclusion, the following clause has been introduced into the Bill, with the avowed purpose of rendering injunctions and orders to stay proceedings more effectual. It is new in substance and form :—

“In case any action, suit, or proceeding in any Court of Law or Equity shall be commenced, sued, or prosecuted, in disobedience of and contrary to any writ of injunction, rule, or order of either of the Superior Courts of Law or Equity at Westminster, or of any Judge thereof, in any other Court than that by, or in which such injunction may have been issued, or rule or order made, upon the production to any such other Court or Judge thereof, of such writ of injunction, rule, or order, the said other Court (in which such action, suit, or proceeding may be commenced, prosecuted, or taken), or any Judge thereof, shall stay all further proceedings contrary to any such injunction, rule or order, and thenceforth all further and subsequent proceedings shall be utterly null and void to all intents and purposes: Provided always, that nothing herein contained shall be held to diminish, alter, abridge, or vary the liability of any person or persons commencing, suing, or prosecuting any such action, suit, or proceeding contrary to any injunction, rule, or order of either of the Courts aforesaid, to any attachment, punishment, or other proceeding to which any such person or persons are, may, or shall be liable, in cases of contempt of either of the Courts aforesaid, in regard to the commencing, suing, or prosecuting such action, suit, or proceeding.”

It is, of course, quite possible that the Bill may still undergo further changes during its progress through the Commons, but the prevailing impression is that it will be accepted, even by those it does not satisfy, as an important practical measure by which the proceedings of the Superior Courts of Law will be disencumbered of a multitude of useless proceedings which tended to produce delay and increase expense, without any equivalent advantage.

THE CHANCERY PROCEDURE ACT.

WE laid before our readers last week (p. 76, *ante*) the substance of the Bill for carrying into effect the Commissioners' Report on the practice and course of proceeding in the Court of Chancery, as amended in the Select Committee of the House of Lords, and now before the House of Commons.

There can be no doubt that the Bill is for the most part a very beneficial measure.

The recommendations of the Commissioners and the suggestions contained in the Report of the Incorporated Law Society have been adopted (with some exceptions) either in this Bill or the Bill for the abolition of the office of Master. Both branches of the Profession being generally agreed on the proposed measures, we earnestly hope that no untoward circumstance will occur to prevent the Bills from being passed this Session.

Notwithstanding the *general* concurrence which seems to prevail on the subject, it might be expected that some doubts and exceptions would arise and some further improvements be suggested. We have had an opportunity of perusing the petition of the Metropolitan and Provincial Law Association which was presented to the House of Lords last week, containing some practical suggestions, from which we extract, in substance, the following points:—

The matters with which the Bill proposes to deal come within the daily experience of Solicitors, and they therefore feel that being qualified to judge how far the measure will work effectually, and in what respects it may be improved, it is a duty they owe to the suitors, whom they represent, and to the public, to submit their views to the Legislature.

THE INCONVENIENCE, DELAY, AND EXPENSE OF PRINTING BILLS.

The circumstance of Bills being subject to be amended from time to time will be an insurmountable difficulty, both as regards the inconvenience and expense of the new plan.

Even if a ready reference to the Bill were ever so essential, yet without regard to the increased labour which will be thrown upon Solicitors, necessarily involving an increased charge, the filing of every Bill or Claim under the system of printing, will, upon an average, delay the taking of the first proceedings for relief for a week at least, and will in all cases be inconvenient, and in many, be a very serious evil.

A Bill under the present system, whatever be its length, can be filed within 12 hours, from the time the draft has been completed, but if a staff of printers could be had always ready to begin the work, the corrections and revisions of the proofs would necessarily occasion delay, even if no time be lost by the printer, three examinations at least being required, instead of one.

If upon examining the proof, any addition or important alteration should be required, not only further delay, but increased expense must be incurred; and in comparing the expense of printing with that of copying, this should be taken into account.

It is a mistake to suppose because the printers to the Houses of Parliament, who are obliged to keep up a large staff to do the work

of the country, can at all times command the services of that staff, for printing within a few hours any document, however long, that ordinary printers can be found ready to take up work at a moment's notice, and to set aside all other business to print Bills in Chancery.

In the case of copying, the work has to go through the hands of one party only; but in the case of printing, the suitor will have to depend upon the activity of at least three persons—the compositor, the pressman, and the reader, without reference to the necessary examination with the draft, to insure correctness.

In considering the question of convenience, it has been overlooked that if the Bill be printed with riders, showing the amendments, tied up with copied papers, the perusal thereof and reference thereto, and to all the riders and amendments, instead of being facilitated, will be made more troublesome and inconvenient than it now is.

MANY ORDERS SHOULD BE MADE AT CHAMBERS.

A great portion of the expense at present attending Chancery proceedings, is caused by the necessity of instructing Counsel to apply to the Court upon minor and unimportant questions, which do not require any legal argument. Now the 'amendments' made have to a great extent withdrawn the provisions for remedying this evil, which were contained in the Bill, as presented by the Lord Chancellor; and in its present shape the Bill will actually increase, instead of diminish this source of expense. It is submitted that all the powers and authorities which are given by the Bill to the Court should be equally given to the Judge, and that it should be left to his discretion to determine what matters may properly be disposed of in Chambers, and what require to be heard in open Court.

The expense of an application to the Court in cases where there are only defendants appearing by two solicitors, which is very much under the average, is never less than 20*l.*, and frequently more than double that amount; whilst the expense of an application to a Judge at Chambers would probably not exceed in such cases 5*l.* or 3*l.*

By the 1 & 2 Vict. c. 45 s. 1, all the powers possessed by a single Judge of the Superior Courts of Common Law, when sitting in Court, are conferred upon the Judges sitting at Chambers, and this provision has been found very beneficial to the suitors, and has worked extremely well.

The Equity Judges indeed, have long been in the habit of making orders in cases of emergency, upon the application of Solicitors, in their private rooms; but in order to get such orders drawn up by the Registrars, it is necessary to produce a brief marked by Counsel,—a practice which shows the great advantage, and even the practical necessity of such a distinction as here suggested, being vested in the Judges, but which is at present clogged by the utterly useless expense of the brief of Counsel.

SUGGESTIONS ON DETAILS OF PRACTICE.

It is also submitted that it would be an advantage if the plaintiff, before filing his Bill, were entitled to serve upon the defendant a subpoena or summons, requiring him to appear, and this plan would be extremely useful in cases where a defendant is about to abscond, and the Bill should not be filed until a limited time after service of the subpoena or summons, except at the peril of costs, if such filing should be thought improper by the Court or Judge.

All process of contempt for not appearing should be abolished; it has in effect, by the recent alterations, become unnecessary, and the plaintiff should not be at liberty to use it, for the imprisonment of an obstinate defendant is productive of great evil, and should not be resorted to except in cases of absolute necessity.

Suitors ought to have the right of serving process to appear; and notices of any proceedings in the course of a suit without leave of the Court, upon parties either within or out of the jurisdiction, subject to the Court or a Judge determining the service to be valid, or not, upon the facts relating to it being subsequently brought under their notice.

Much difficulty at present arises in serving parties who are not accessible, and especially in foreclosure suits, and suits against judgment creditors. More extensive powers should therefore be given to the Court and the Judges, for allowing substituted service; and particularly in cases where regular service cannot be effected, the Court or Judge should be empowered in their discretion to bar the rights of absent parties by advertisements to be inserted in the public newspapers, or by such other notices as the special circumstances of each case will admit of,—much costs and great delay being occasioned by the present practice, in consequence of the limited power possessed by the Court to deal with absent parties.

Much facility will be afforded by allowing causes to be heard on motion; but it is essential that regulations should be made for setting down in a paper, motions of whatever description, so that a suitor may know so far as practicable when his case may be heard, and be assured that it will be taken in its turn. The present system is productive of great expense to the suitor, and great inconvenience to the Solicitors and the members of the Junior Bar.

Provisions should likewise be inserted in the Bill for taking pleas, answers, and disclaimers, or examinations, as well within as out of the jurisdiction by any person authorised to administer oaths, and a commission for the purpose should be only necessary, where the oath cannot otherwise be conveniently administered.

Again, increased facilities should be given for the administration of oaths, and for filing affidavits made out of the jurisdiction without verification of the signature of the person administering the oath, agreeably to the ample provisions of the Joint Stock Companies Winding-up Amendment Act, 1849 (12 & 13 Vict. c. 108, s. 24).

Provision should also be made for the transmission by post of the depositions of witnesses.

The Court or a Judge, upon the application of either party, at any time should be at liberty to direct that the evidence should be taken either wholly *viâ voce*, or partly *viâ voce*, and partly by interrogatories, or partly by affidavit, upon such terms as to costs, or otherwise, as may be deemed right, with power to direct security to be given for all or any part of the costs.

The rules for admission of documents at Common Law, made under the Act 3 & 4, W. 4, c. 42, have been found of great value, and the Solicitors, for the last 10 years, have frequently applied to the Judges for similar rules in Chancery, but hitherto without effect.

Powers should be given to the Court to make rules for requiring admissions to be made upon such terms as the Judge may see fit; and the Judge should have a discretionary power to authorise admissions in cases of married women, infants, or persons otherwise under disability, and out of the jurisdiction of the Court.

The power of the Court of directing persons to be made parties to the suit, should not be confined to the hearing of the cause, but the Judge should be at liberty to exercise such discretion at any time.

The Clauses empowering the Judge to proceed without Bill or claim, should be extended to all cases whatever, leaving it to the Judge in each case to proceed or not without a formal writ; and the Judge should have power to stay suits instituted by creditors or legatees, for the administration of estates already under the administration of the Court.

The service of a subpoena or writ of summons on a party now required to be brought before the Court by Supplemental Bill, should be sufficient for the purpose, without any order of course, and orders of course should be entirely abolished.

It should not be made imperative on the Judge, but left to his discretion to direct an abstract of the title to property ordered to be sold to be submitted to Counsel, as the suitor ought not to be subjected to the expense of such a step, in cases where the property is of small value, or where the title is simple, or has recently been investigated.

The provisions requiring the Courts of Law to send a case for the opinion of an Equity Judge, where the plaintiff has an equitable estate or interest only, should be altered by allowing the Judge either to send such a case, if he should see fit, or to determine the equitable question, if he should deem it right to do so.

Arrangements should be made for the more speedy transaction of business at the Registrar's office; and the settling of minutes, and drawing up orders.

ABOLITION OF THE MASTERS' OFFICES IN CHANCERY.

UPON the introduction of the Bill for abolishing the Masters' Offices, it was suggested in these pages,¹ that the Bill did not contain any adequate provision for the discharge of the indispensable duties now performed with greater or less efficiency in the Masters' Offices. Let the existing Equity Judges work as zealously and unremittingly as it is possible they can, and yet they will be unable satisfactorily to dispose of the Court and Chamber business together. The business of the Courts stands still whilst the Equity Judges are engaged at Chambers, and the Chamber business must halt whilst the Judges are sitting in open Court. The only remedy for this, as forcibly and convincingly put forward in the petition of the Metropolitan and Provincial Law Association, printed in our last Number, (page 77,) is to augment the number of the Equity Judges, having two Judges to each Court, so that one Judge should dispose of the Court business whilst the second is engaged at Chambers, and each Judge devote a day alternately to the one and the other. This is the most obvious, it might be said the only, arrangement by which the suitors and the public can be secure that the new scheme will not fail from a deficiency of judicial and administrative strength.

It is said that the economical spirit which prevails in the Legislature precludes the expectation that any proposal to increase the number of Equity Judges would be sanctioned by Parliament. It is to be lamented that other branches of the public service, as well as the administration of justice, have not more of the attention and regard of our economical legislators, but it is monstrous that in a country where there is much wasteful expenditure, an important experiment, like that which is involved in the transfer of the jurisdiction of the Masters in Chancery, should be imperilled by the paltry apprehension that it would be attended with a present increase of expense. That the increase would be temporary is manifest, for the ultimate saving by the abolition of the Masters' Offices would more than compensate the Treasury for the salaries that would be required for four additional Vice-Chancellors.

At this period of the Session it would be hopeless to expect that the abolition of the Masters' Offices Bill could be remodelled in the manner necessary to provide for such

an arrangement as that which has been suggested, consequent upon the increase of the number of Equity Judges. Under the circumstances, perhaps the best arrangement that could be made is that suggested in the petition already alluded to, namely, to induce three of the Common Law Judges, to assist the Equity Judges. It is quite true that the business of the Superior Courts of Law is now much less than at the period when a fifth Judge was added to each of three Courts. It must be remembered however, that the abolition of the Welsh Judges was a part of the scheme under which the Common Law Judges were increased from twelve to fifteen, and that although the town business may have so much diminished as to enable one Judge to be spared from each Court, all the Judges are employed during the Circuits. To allow one of the Judges from each of the Courts of Law to assist the Equity Judges, it would be essential before the next Spring Circuit to alter the Circuit arrangements.

The absurdity has long been manifest of having two Judges visiting a county town with only two or three civil causes to try and perhaps all of those undefended. In the smaller and less populous counties, one Judge may dispose of the Assize business, Civil and Criminal, without difficulty, whilst in the larger counties, unless the Circuits were made more frequent, the attendance of two Judges is still indispensable. With the facilities of transit afforded by railways, there does not seem to be any insuperable difficulty in having three or four, instead of two, Circuits annually, and there is certainly no difficulty in the Judges of different Circuits mutually assisting in those few counties in which there happens to be a considerable number of criminals for trial and also a heavy Cause List.

We trust no time will be lost in making some arrangement to meet the difficulty which manifestly presents itself in carrying into operation the measure for the abolition of the Masters' Offices. It is an experiment of the utmost importance, in the success of which the Public and the Profession are deeply, if not equally interested.

A clause has been recently introduced in the Bill giving the Lord Chancellor authority in the exercise of his discretion, if he deems it expedient, to refer any matter to one of the Masters. It must be admitted, however, that a reference of new matter to a tribunal condemned by the Legislature and by public opinion, would be most unsatisfactory and objectionable.

¹ Vol. 43, page 486.

MOTIONS BEFORE THE LORDS JUSTICES.

NOTICE.

FROM this day until the 24th July next, inclusive (but not later), notices of motion that in the ordinary course would be given for the Courts of the Vice-Chancellors, or any of them, may be given for the Court of the Lords Justices.

The motions of which notice shall be so given will be heard before the Lords Justices in turn according to their order in a list to be made, from which they will, on days to be appointed for that purpose, be called.

But the Lords Justices will not (except on appeals) hear motions, of which notice shall be given before any of the Vice-Chancellors according to the present course, the power of so giving notice not being intended to be suspended or restricted.

In all cases appeal motions are to take precedence of original motions, except that any original motion which shall have been in the paper is to have precedence of appeal motions which have not been in the paper.

(Signed) H. WOOD, Registrar.

Registrar's Office, 31st May, 1852.

LAW OF ATTORNEYS AND SOLICITORS.

LIEN ON TITLE DEEDS.

IN a recent case before the Lords Justices, on an appeal from Vice-Chancellor Wigram, (just reported,) it was held, that the lien of solicitors, either for their general bill of costs, or for their costs relating to a conveyance, could not prevail against a mortgagee,—the right of a solicitor in respect of his lien for costs being no greater than the right of the client.

The facts were briefly these:—A purchaser of property subject to a mortgage, executed a second mortgage before the completion of the purchase: Afterwards a third mortgage was created, with respect to which the second mortgagee's conduct was such as to give it priority over his. The purchase was then completed, the purchaser paying off the first mortgage, and taking a conveyance to a trustee for himself.

On this occasion the title-deeds were handed to his solicitors, who afterwards took a transfer of the third mortgage. One of the solicitors was the trustee for the purchaser in the conveyance. The second mortgagee did not give them, nor had they any notice of the security.

The circumstances in question are adverted to in the course of the judgment which was delivered by Lord Justice Cranworth. He said—

"The argument for the appellant divided itself into three heads; first, it was contended that, independently of any special circumstances, the lien of the solicitor must prevail; secondly, if this were not so, still that here there were circumstances which would give such a lien independently of any general right; and thirdly, it was argued that, even if there is no lien for the general costs due to the solicitor, still there is such a lien for the costs of and incidental to the procuring the conveyance.

"On the first point we think it clear that no such lien as that contended for exists. The general lien of a solicitor is merely a right to keep back from his client the deeds and papers which he holds as solicitor, until his bill of costs is satisfied. It is a right derived entirely through the client, and therefore, on the most obvious principles of justice, cannot go beyond the right of the client himself. If the client's right to the deeds which came to the hands of the solicitor is absolute, so will be the right of the solicitor. If the deeds in the hands of the client are subject to any rights outstanding in third parties, such rights will follow them into the hands of the solicitor. These consequences flow so immediately from the nature of the relation subsisting between the client and his solicitor, that, even independently of authority, we should have felt bound by the principles on which they depend. But we have the most ample authority in support of the view we take on this part of the case, in the three cases before Sir E. Sugden, so much dwelt on in the argument. We allude to the cases of *Smith v. Chichester*, 2 Dru. & War. 393; *Blunden v. Desart*, 2 Dru. & War. 405; and *Molesworth v. Robin*, 2 Jones & Lat. 358. In the last of these cases it was expressly decided, that the claim of a party, having an equitable right against the client, must prevail against the solicitor into whose hands the deeds had come after such equitable right had arisen. Indeed, the principle is obviously the same, whether the right affecting the client's interest is legal or equitable. No man, as was stated by Sir E. Sugden in his judgment, can give a lien to his solicitor of a higher nature than the interest he himself has in the deeds. Applying then these principles to the facts of the present case, it appears to us clear, that (laying aside all consideration of particular conduct) the solicitor did not, on the completion of the contract, acquire any lien on the deeds against the plaintiff. If, on the completion of the contract and execution of the conveyance, in January, 1842, the title deeds had been all handed over to Lewis himself, and not to his solicitors, he would then have had them, subject to an equitable claim on the part of the plaintiff as mortgagee, by virtue of his mortgage of September, 1839; and if Lewis

had not then put them into the hands of his solicitors, they could only have held them subject to the same right as had attached on them in the hands of Lewis. It can make no difference, that instead of coming first into the hands of Lewis, and from him to the solicitors, they were at once handed by the vendor to the solicitors. For the solicitors, in so obtaining them, obtained them, not by any title paramount to that of their client, but as his agents, and of course with all the liabilities which would have attached on them if they had passed first into the hands of the client, and from him to the solicitors.

"This disposes of the first head of the argument. But then it was said, *secondly*, that whatever may be the general doctrine, here the conduct of the plaintiff was such as to preclude him from insisting on his title against the lien of the solicitors of Lewis. But we can discover nothing whatever in the plaintiff's conduct to warrant such a proposition. When the plaintiff advanced his money, and obtained his mortgage deed, in September, 1839, he of course employed his own solicitor to act for him. All which can be alleged against him by the solicitors of Lewis the mortgagee is, that he did not inform them of his security. But he was under no obligation to give them any such information, nor was it in the ordinary course of business that he should do so. There is no suggestion that he meant or wished to mislead them. There was nothing to suggest to his mind that it could be of importance to the solicitors that he should give them notice of his security. Cases may undoubtedly occur, in which parties, by standing by and remaining silent, may give to others rights against them, in the same way as if they had been active in making representations; but that can only be when it has been the duty of the plaintiff not to be silent, or when the party remaining silent might reasonably infer that such silence would be taken by others as sanctioning a particular course of conduct. No such circumstance exists here. The conduct of the plaintiff, for aught, at least, that appears, was just what might be expected from a man intending to deal with perfect fairness. He became mortgagee, employing his own solicitor, and took it for granted that the mortgagor and his solicitor would settle their own rights among themselves. There does not, therefore, appear to us to be anything in the conduct of the plaintiff depriving him of his ordinary rights.

"The only remaining question is on the point whether the solicitors may not have a lien against the plaintiff, though not for their whole demand on Lewis, yet for so much as relates to the obtaining the conveyance of the Lyppiatt estate from the vendors. As to this the argument was, that these costs were incurred for the common benefit of the plaintiff and Lewis, and so that the lien of the solicitors ought to prevail against both the one and the other. On this minor point, Lord Justice Knight Bruce entertains some doubt, and I can

therefore express my own opinion only. In my opinion, these costs do not differ from the rest. I think the solicitors have no lien against the plaintiff for the costs of obtaining the conveyance, any more than for any other part of their bill.

"The lien of the solicitor is a right to retain deeds as a mode of enforcing payment of a debt due by the party whose deeds are retained. It is essentially a right arising between the party employed and his employer. The right, when once constituted, may, under circumstances, prevail in favour of the solicitor, not only against his employer, but also against parties deriving title under his employer. But it always originates from the relation of client and attorney, *i. e.* employer and employed. Taking this to be a correct view of the law, the question here is, who employed Messrs. Wathen, Bassett, and Gurney, to obtain and perfect the conveyance? No doubt when they had completed the conveyance, their services inured to the benefit, not only of Lewis the purchaser, but also of the plaintiff, who claimed under him. But I do not think this is material. If the case could be brought to the point that the solicitors were acting not only for Lewis, but also for the plaintiff, then neither Lewis nor the plaintiff could take the deeds of conveyance out of their hands without paying them the full amount of their costs incurred in preparing and perfecting them. But this certainly was not so. The solicitors were the solicitors of Lewis, and of him only. He alone employed them. He alone was liable to pay them for their services, and against him alone, therefore, was their lien available when the deed came into their hands. Their right is, as I think, precisely what it would have been, if, on the final settlement of the purchase and execution of the deeds, the vendors had delivered the deeds to Lewis, and he had handed them over to the solicitors. In such a case, the right of the solicitors would be only, as I think, to hold the deeds subject to all the rights, legal and equitable, affecting them in the hands of Lewis, and therefore their right was, as I conceive, subject to a prior right in the plaintiff in respect of his mortgage of September, 1839. I do not think there is any distinction between these deeds and the other deeds in the hands of the solicitors.

"The result, therefore, is, that the decision of Sir James Wigram will be affirmed in every respect, and this appeal must therefore be dismissed. And Lord Justice Knight Bruce concurs with me in thinking that the costs of the appeal must in that case follow the event, and so be paid by the appellants, because the appeal reproducing litigation on points manifestly, in the opinion of both members of this Court, properly decided by the Vice Chancellor, has taken a range widely beyond the narrow and restricted part of the case, on which alone my learned brother entertains any doubt."

There was another question raised at the Bar whether the lien of a solicitor is affected

by his taking a partner. On this point the Court observed that it was unnecessary to say whether, if the lien had been established, it would have extended to the debts due to all the successive firms, or only to that due to the last firm? whether, in short, according to the doctrine laid down in *re Forshaw*, 16 Sim. 121, the lien of a solicitor is affected by his taking a partner, as that question did not arise in this case. On that point the Court expressed no opinion. *Pelly v. Wathan*, 1 De G. M'N. & G. 16.

HARDSHIP OF CERTIFICATE TAX ON OLD PRACTITIONERS.

To the Editor of the Legal Observer.

SIR,—I hope nothing will intervene to prevent the passing of the Bill to rescind the Duty on Attorney's Certificates.

I was admitted in May, 1796, and am now 78 years of age, and am the oldest solicitor in practice in Cornwall.

I have had a large family, supported chiefly by my Profession, and the sums I paid for my certificates from 1796 to 1851, and the compound interest thereon, would have been of great importance to me in my advanced age.

I will not enter into the injustice of the Tax, because it has elsewhere been ably done, but a short summary of what I have expended may be read by many who have not had opportunity to enter into details and the origin of the Tax and its continuance:—

	London Attorney.	Country Attorney.
Duty laid on 1784	.. 5 <i>l</i> . ..	3 <i>l</i> .
Duty laid on 1804	.. 10 <i>l</i> . ..	6 <i>l</i> .
Duty laid on 1815	.. 12 <i>l</i> . ..	8 <i>l</i> .

I paid for my Certificates from 1796 to 1851, inclusive £ 378
Compound interest thereon at 5*l*. per cent. 650

£1,028

Penzance, 18th May, 1852.

R. E.

[If our respected Correspondent had been a London Attorney, the amount would be increased to about 1,400*l*.—ED.]

QUESTIONS AT THE EXAMINATION.

Trinity Term, 1852.

I. PRELIMINARY.

1. WHERE, and with whom, did you serve your clerkship?

2. State the particular branch or branches of the law to which you have principally applied yourself during your clerkship.

3. Mention some of the principal law books which you have read and studied.

4. Have you attended any, and what, law lectures?

II. COMMON AND STATUTE LAW, AND PRACTICE OF THE COURTS.

5. State some of the principal forms of action at common law.

6. A father and his child, aged 10, receive injuries by a collision on a railway. State by whom an action must be brought for compensation for these injuries, and whether it must be by one or more actions.

7. A servant is driving a cart, (for the master's benefit,) and runs over and injures a man. Would the master be liable, and if so, what must be the form of action? If the master was himself present, and sanctioned the particular act which caused the injury, would that make any difference in the form of action?

8. A defendant keeps out of the way, and cannot be served with a writ of summons. Has the plaintiff any remedy by which he can proceed without effecting such service, and, if any, explain the same, and how it can be done?

9. A Judge gives a plaintiff leave to arrest his debtor, who is about to leave the country, upon mesne process. What steps must be taken, and upon what process is such arrest to be effected, and when the defendant is arrested has he any mode of getting out of custody if he intends to dispute the debt?

10. A defendant is served with a writ of summons, and the plaintiff proceeds no further. What steps must the defendant take, and when, to enable him to terminate such suit?

11. What is an action of ejectment? Is there any difference in commencing that and an action of trespass?

12. If an action of ejectment is brought against a tenant, can the landlord come in and defend his interest in the premises, and how?

13. In an action of ejectment, a defendant obtains a verdict. Is the plaintiff's claim to the premises sought to be recovered barred by such verdict?

14. A. has an action brought against him by B., a carpenter, for, say, 250*l*. A. considers the charges exorbitant, and proposes through his attorney to pay B. 170*l*. and his costs then incurred. B. declines it. This is at an early stage of the cause,—say after writ served, or after declaration, and before plea. Is there any mode by which A. can pay or offer to pay that amount to B., so as to prevent his being liable to further costs, provided B. does not succeed in recovering more than the 170*l*.?

15. A defendant demurs to part of a declaration, and pleads issuably to the remainder. What course must the plaintiff take, and how is the action to be continued?

16. Has any alteration been made lately by the legislature with regard to evidence, and as to the competency of interested parties as witnesses.

17. A plaintiff is a foreigner residing out of the jurisdiction of the Court. Has the defendant any mode of preventing the loss of

his costs, in case the plaintiff fails in his action?

18. In an action of trespass, defendant pleads the general issue, and a justification to the whole declaration. Verdict for the defendant on the justification, and for the plaintiff on the plea of general issue without damages. What party will be entitled to the costs?

19. State the result as to the costs in the following cases:—Where a juror is withdrawn on the trial of a cause. Where, in an action of libel, the plaintiff recovers only 5s.

III. CONVEYANCING.

20. In the case of a purchase of lands by B., the conveyance being made to A. and his heirs to the ordinary uses, to bar dower in favour of B., (the purchaser), with a power of appointment given to B., with which of them should the covenants for title, &c., be entered into? and why?

21. Against whom is a voluntary conveyance good, and under what circumstances does it cease to be a flaw in a title?

22. For what periods is accumulation of income allowed, and when are trusts for accumulation void in toto, and when only partially void?

23. How are estates tail in copyholds barred, distinguishing between the modes of barring legal and equitable estates tail?

24. In what cases is it now not necessary that the formalities required by the instrument creating a power should be observed, when the power is exercised, and what formalities must be substituted in such cases? Before the recent Wills Act was there any exception to the rule that required a strict adherence to the prescribed formalities?

25. When property is limited (not in contemplation of marriage) to the separate use of an unmarried woman, without power of anticipation, what are her rights in such property while she remains unmarried, and what are her rights and those of her husband in it, if she subsequently marries without a settlement?

26. What is the difference between Common Law dower, and dower as regulated by the 3 & 4 W. 4, c. 105?

27. In what case will a devise or bequest of real or personal estate not lapse by reason of the death of the devisee or legatee in the lifetime of testator?

28. Define contingent remainders; how were they formerly capable of being destroyed, and what means were usually adopted to preserve them? Has there been any recent change in the law in these respects?

29. A married woman, by deed enrolled and acknowledged and executed by her and her husband, conveys and assigns her reversionary interest in real and personal estate to a purchaser for valuable consideration. What is the effect of this deed on the real, and what on the personal, estate?

30. What are emblements?

31. What change has recently been made in the law with respect to claims for emblements, where tenancies determine by the death of the landlord, such landlord being tenant for life?

32. A., by his will, gives and bequeaths a legacy of 200*l.* to B. (a stranger), and directs his executors to pay it on B.'s attaining 21. B. dies under 21, after the death of A.,—who is entitled to the legacy, and why?

33. In what Court or Courts should a will of personality be proved, where testator leaves bona notabilia in different dioceses?

34. Is anything, beyond probate of the will, necessary in order to perfect the title of a person to whom a leasehold estate (for years) has been given by will?

IV. EQUITY, AND PRACTICE OF THE COURTS.

35. If property be given to the separate use of a woman unmarried at the time of the gift, will the separate use be enforced on her subsequent marriage; and what will be the effect on her separate use of the death of her subsequent husband, and what the effect of it in case of her contracting a second marriage?

36. Explain the difference between legal and equitable assets, and the rule according to which they are respectively administered among creditors.

37. What is meant by the term "Tacking" as applied to mortgages? and can a second mortgagee prevent a first mortgagee from tacking, and how?

38. What is meant by "Equitable Waste"? Will a tenant for life without impeachment of waste be restrained from committing it?

39. A. and B. claim property which is in C.'s hands, but in which C. has no interest. How can C. protect himself? If C. had himself any interest in the property, would it make any difference in the nature of his proceedings?

40. What is an injunction? Mention the different kinds of injunctions.

41. How does the remedy afforded by Courts of Equity for breaches of contract differ from that afforded by Courts of Common Law in like cases?

42. Explain the method in which evidence is usually taken in Equity.

43. In what cases must a subpoena be served on the party? and in what cases will service on the solicitor of the party suffice?

44. If a defendant, being served with a subpoena to appear and answer, should not do so within the time allowed, what steps would you advise the plaintiff to take?

45. What is the effect of enrolling a decree, and are decrees generally enrolled?

46. If a solicitor be appointed a trustee or executor, is he entitled under any and what circumstances to make professional charges against his cestui que trust or testator's estate?

47. If a plaintiff neglect to prosecute his suit, state the proper course for the defendant to adopt.

48. When a person out of the jurisdiction of the Court sues in Chancery, will he be placed

under any and what terms for the protection of the defendant?

49. What is the process for compelling a corporation to answer a bill in equity?

V. BANKRUPTCY, AND PRACTICE OF THE COURTS.

50. What are the requisites to support a petition by a creditor for an adjudication in bankruptcy, and to obtain adjudication thereon?

51. Has the trader any and what time to dispute the adjudication?

52. State the usual course and routine of proceedings at the several public meetings under an adjudication in bankruptcy.

53. What is the effect of the bankruptcy of one of several traders in partnership?

54. Describe the course of proceeding against a trader debtor, by demand of debt and summons in bankruptcy.

55. What course is open to the trader debtor to take upon being so summoned, in order to avoid committing an act of bankruptcy?

56. How are corporate bodies or public companies to prove their debts in bankruptcy?

57. How, and by whom, are assignees chosen, and what jurisdiction has the Court of Bankruptcy over the choice of assignees?

58. Is any, and what priority allowed to any creditors?

59. What is the law with respect to property held by a bankrupt as trustee?

60. In what circumstances is a settlement made by a trader invalid?

61. When can goods sold to a trader be stopped in transitu? State instances.

62. What securities held by a creditor must he realise before he can prove his debt, and what securities may he retain, and yet prove?

63. How is he to proceed in order to realise such securities as he must realise, before he can prove?

64. What is the present law with respect to the bankrupt's certificate of conformity?

VI. CRIMINAL LAW, AND PROCEEDINGS BEFORE MAGISTRATES.

65. What is burglary, and within which of the 24 hours must it be committed in order to constitute the offence?

66. Can husband and wife be evidence for or against each other in criminal cases?

67. Is an attorney liable to serve as a juror on a coroner's inquest, or on the trial of a criminal matter?

68. By whom and in what manner is a person appointed a justice of the peace for a county? and is it necessary that he should possess any and what property qualification for the office?

69. Is a private as well as a public nuisance indictable?

70. If a person pick up a thing when he knows he can find the owner, and instead of returning it to the owner, converts it to his own use, would he be guilty of larceny or merely subject to a civil action?

71. Are persons stealing dogs, or in the possession of dogs knowing them to have been stolen, liable to any and what penalty or punishment?

72. Is the stealing or destroying title deeds a criminal offence, or only actionable "as savouring" (as Blackstone expresses it) "of the realty?"

73. Can a landlord in any and what case, and in any and what manner, recover the possession of premises which is withheld after the term has ended or been determined by legal notice without bringing an action of ejectment?

74. Can the owner or occupier of land expel by force any person found trespassing upon it, or is the only remedy by action?

75. Is there any and what act for the apprehension of persons trespassing and doing damage, and can they be taken before a magistrate without a warrant?

76. Is it lawful to set a man-trap, spring-gun, or other engine which is calculated to destroy human life, or to inflict bodily harm in any and what place or places, and during what time of the 24 hours?

77. Under what circumstances may persons playing on musical instruments in the public streets be required to desist? and if they refuse to do so, what is the mode of proceeding to compel them?

78. Have justices jurisdiction over apprentices, where no premium is paid, and within what amount where one is paid?

79. What are the different modes by which a parochial settlement can be gained? How and before whom is the disputed settlement of a pauper to be tried and decided, and if the appellant or respondent is dissatisfied with the decision, does appeal lie to any other, and what tribunal?

NOTES OF THE WEEK.

SITTINGS IN ERROR.

THIS morning (June 1) their Lordships assembled in the "Exchequer Chamber" for the purpose of appointing the days on which their Lordships would sit "in Error," after the present Term. The days appointed were as follow:—

For "Errors" from the Court of Queen's Bench, June 14 and 15.

For "Errors" from the Court of Common Pleas, June 16 and 17.

There are no "Errors" from the Court of Exchequer for these sittings.

LAW PROMOTION.

THE Queen has been pleased to constitute and appoint *William Edmondstone Aytoun*, Esq., Advocate, to be Sheriff and Steward of the Sheriffdoms or Stewartries of Orkney and Zetland, in the room of *Charles Neaves*, Esq., resigned.—From the *London Gazette* of June 1.

NEW MEMBER OF PARLIAMENT.

Charles Pelham Pelham Clinton, commonly called *Lord Charles Pelham Pelham Clinton*, for Sandwich, in the room of Charles William

Grenfell, Esq., who has accepted the office of Steward of her Majesty's Manor of Hemp-holme.

RECENT DECISIONS IN THE SUPERIOR COURTS,
AND SHORT NOTES OF CASES.

Lord Chancellor.

May 31; June 1.—*In re North of England Joint-Stock Banking Company, ex parte Holme*—Appeal from the Vice-Chancellor Knight Bruce dismissed with costs.

May 31; June 1.—*In re St. George's Steam Packet Company, ex parte Humer's Trustees*—Appeal allowed from Vice-Chancellor Knight Bruce.

June 1.—*In re North of England Joint-Stock Banking Company, ex parte Crossfield*—Appeal dismissed from Vice-Chancellor Knight Bruce.

— 1.—*In re Cobbett*—Application for *habeas corpus* refused.

Lords Justices.

In re Port of London Shipowners' Loan and Assurance Company, ex parte Yelland. May 22, 1852.

WINDING-UP ACT.—CONTRIBUTORY.—ALLOTTEE OF SHARES.

Y. applied for shares in a joint-stock company which was completely registered under the 7 & 8 Vict. c. 110, and shares were accordingly allotted to him, and he accepted them and paid the deposits thereon, but he had never executed the deed of settlement. His name was nevertheless returned as a subscriber under the 7 & 8 Vict. c. 110, to the Registry Office: Held, dismissing with costs an appeal from Vice-Chancellor Parker, that there was sufficient to bind Y. in equity as a party to a contract to become a shareholder, and that he was therefore liable as a contributory.

THIS was an appeal from the decision of Vice-Chancellor Parker, confirming the insertion by the Master of the appellant's name in the list of contributories to the above company. It appeared that the appellant had applied for shares after the company had been completely registered, and that two shares had been allotted to him and he paid the deposits thereon, but that he had never executed the deed of settlement. His name had, however, been returned to the Registry Office as a shareholder under the 7 & 8 Vict. c. 110.

Willcock and Terrell, in support of the appeal, referred to the company's deed of settlement, which provided (inter alia) that immediately on its being executed the party executing should be entered on the register of shareholders and be returned to the Registry Office under the 7 & 8 Vict. c. 110, and should assume thenceforth, but not before, the liabilities of a shareholder, and citing s. 26, which enacts, that "no shareholder of any joint-stock company completely registered under this act shall

be entitled to receive any dividends or profits, or be entitled to the remedies or powers hereby given to shareholders, until he shall have executed the deed of settlement of the said company, or some deed referring thereto, and also have paid up all instalments or calls due from him, and shall have been registered in the Registry Office aforesaid."

The *Lords Justices* (without calling on *Rosburgh* and *W. M. Morris* for the official manager, *contrà*) said, that as the appellant had applied for shares and had paid his deposit on them when allotted, it was sufficient to bind him in equity as a party to a contract to become a shareholder, and that his name was therefore properly placed on the list of contributories. The appeal was accordingly dismissed, with costs.

May 26.—*Newman v. Hutton*—Appeal dismissed with costs from the late Vice-Chancellor Wigram.

— 27.—*Little v. Newport, Abergavenny and Hereford Railway Company*—Appeal from Vice-Chancellor Parker dismissed.

— 28.—*In re Hewson*—Order for payment over to credit of lunacy income of lunatic, after certain deductions by executors of husband.

— 29.—*Money v. Jordan*—Appeal dismissed from the Master of the Rolls without costs.

— 31.—*Price v. Macaulay*—Appeal dismissed from Vice-Chancellor Parker without costs.

June 1.—*Hughes v. Morris*—Appeal dismissed from Vice-Chancellor Turner without costs.

Master of the Rolls.

In re Glamorganshire Banking Company, ex parte Maybery. April 22, 1852.

WINDING-UP ACT.—CONTRIBUTORY.—ADVANCE BY SOLICITOR TO CLIENT, THE ORIGINAL HOLDER OF SHARES.

M., a solicitor, advanced money to a client to discharge a debt due to a banking company, upon certain leasehold security held by them, and the shares being transferred to him, he received dividends on the shares, but had never paid two calls thereon. The directors passed a resolution before such calls were made, that their non-payment should not work a forfeiture of the shares, and it appeared their deed of settlement provided, that if calls were not paid within 30 days, the shares were forfeited, unless the directors declared otherwise within two months afterwards: Held, on the

company's being wound up, that M. was liable as a contributory.

THIS was an appeal, from the Master's decision, placing Mr. Maybery, of Brecknock, on the list of contributories to the above company. It appeared that in 1847 he had advanced money to Mr. Thomas Lloyd, a client, who was a debtor to the bank in which he held 20 shares, on the understanding the security held by them on some leasehold property should be transferred to the appellant. The transfer was accordingly made of such security, and the shares were also transferred into the appellant's name, and he received the dividends thereon. It also appeared that in 1849 two calls had been made, but that the appellant had not paid them. By the deed of settlement it was provided, that upon a call being made and not paid within 30 days after it became payable, the shares in respect of which such calls became payable, should be forfeited, unless the directors should declare otherwise within two months afterwards. The directors, however, before the calls became due had passed a resolution, that the non-payment of the calls should not have the effect of causing them to be forfeited.

R. Palmer in support of the appeal.

The *Master of the Rolls*, without calling on the counsel for the official manager, said, that the directors had power to make the resolution in question, and that the shares were therefore not forfeited by the non-payment of the calls. The appeal was accordingly dismissed.

May 26.—*Mitchell v. Beaumont*—Leave to plaintiff to tender conveyance to defendant.

— 26.—*Whitehead v. Thompson*—Stand over on objection for want of parties, with leave to amend.

— 27.—*Prosser v. Morrison*—Decree for an account, and injunction to restrain infringement of patent.

— 27.—*Duke of Buckingham v. Connell*—Receiver appointed.

— 27.—*St. John v. Phelps*—Reference to the Master for account of debt, and injunction to restrain defendant proceeding on *cognovit*.

— 27.—*Bridge v. Bridge*—Stand over.

— 28.—*Ford v. White*—Registered mortgagee with notice of prior mortgage not registered, held not entitled to priority over it.

— 31.—*Attorney-General v. Lord Bagot*—Information as to charity settled, and scheme directed.

— 31.—*Attorney-General v. Ewelme Hospital*—Stand over.

June 1.—*Clark v. Coggs*—Judgment on further directions and costs in special claim.

— 1.—*Ainsworth v. Almon*—Judgment on construction of will.

— 1.—*Douling v. Hudson*—Stand over.

— 1.—*Beresford v. Drivers*—Order as to costs.

Vice-Chancellor Turner.

Macbride v. Lindsay. April 19, 20, 1852.

PUBLIC COMPANY.—BILL AGAINST DIRECTORS CHARGING FRAUD AND FOR RETURN

OF DEPOSITS.—DEMURRER FOR WANT OF PARTIES.

A bill was filed against the directors of a chartered company charging that the charter had been obtained by false representations, and seeking a return of the plaintiff's deposit and calls, and that they might be restrained from making or proceeding against the plaintiff for any further calls; and from entering into any contracts or carrying on business in the name of the company, whereby the plaintiff might be rendered liable, and that they might indemnify him against any liabilities already incurred: Held, that the bill prayed a relief which was common to all the other shareholders, and a demurrer for want of parties was therefore allowed, with leave to amend.

THIS was a bill on behalf of a shareholder in the Eastern Archipelago Company against the directors of the company to obtain the repayment from them of a sum of 300*l.* paid by him as deposits and for calls on 100 shares, and to restrain the defendants from making or proceeding against him for any further calls, and from entering into contracts or carrying on business in the name of the company, whereby the plaintiff might be rendered liable, and that they might indemnify him against any liabilities which had been already incurred. The bill charged that a charter had been obtained by false representations incorporating the company for the purpose of working certain coal mines in the Islands of Labuan and Borneo, the provisions upon which it was to come into effect not having been complied with, which required that the business should not be commenced until it was certified to the Board of Trade by three at least of the directors that 50,000*l.* had been actually paid up, and (100,000*l.*) one-half the capital subscribed for within 12 months from its date. The bill then stated that the certificate to the Board of Trade was untrue and that the necessary amount had not been subscribed or paid up within the time limited. To this the directors and the company demurred for want of parties.

J. Russell and Freeling for the directors; *Sir W. Page Wood*, for the company, in support, referred to *Foss v. Harbottle*, 2 Hare, 461; *Mozley v. Alston*, 1 Phill. 790.

Rollt and Prior for the plaintiff, contra.

The Vice-Chancellor said, that the plaintiff's case was common with that of all the other members of the company, and if a repayment were decreed of his deposits and calls it must also be decreed to the other members, as he became a partner in the speculation by executing the deed in accordance with the charter; and the allegation in the bill of the directors' statement that the other shareholders had sanctioned and concurred, and thereby precluded themselves asking similar relief, did not enable the Court to make a decree in their absence which would be prejudicial to their interests. The demurrer would therefore be allowed, with leave to amend.

May 26.—*Harborne v. Harborne*—Stand over.

—27.—*Duke of Norfolk v. Tenant*—Injunction refused upon undertaking.

—28.—*In re Vardon's Charity, ex parte Churchwardens of St. Margaret's, Westminster*—Reference to the Master.

—28, 29, 31; June 1.—*Hancock v. Moulton*—*Cur. ad. vult.*

Vice-Chancellor Kindersley.

Sweeting v. Sweeting. May 7, 1852.

AFFIDAVIT SWORN IN GUERNSEY.—EVIDENCE OF COMPETENCY OF BAILLIE.

An affidavit was sworn before the baillie and two jurats of the Guernsey Royal Court, and their competency to receive such oath and their signatures were verified by a notarial certificate: Held, that the evidence was insufficient, and that the competency and signing must be verified by affidavit in this country.

THIS was a petition for the sanction of the Court to the marriage of an infant ward, and a party in the above suit. An affidavit was produced in support, which had been made in Guernsey, and sworn before the baillie and two jurats of the Royal Court of that island. A notarial certificate was annexed of their competency to administer oaths and verifying their signatures.

Follett in support, an objection having been taken to the sufficiency of this verification.

The Vice-Chancellor said, that although it was true in certain mercantile transactions the notarial certificate was sufficient, this Court did not recognise it, and the competency and signature of the officer in Guernsey to take oaths must therefore be properly verified by affidavit in this country.

May 26.—*Stansfeld v. May*—Demurrer for want of equity overruled.

—27.—*Hawkins v. Gathercole*—*Cur. ad. vult.*

—28.—*Attorney-General v. Day*—Stand over.

—29.—*Marshall v. Scott*—Upon objection of counsel for defendant, short cause directed to go into general paper.

—29.—*In re Waring and Telwright's Trust*—Stand over.

—31.—*Longstaff v. Rennison*—Judgment on construction of will.

June 1.—*Wilton v. Hill*—Leave to amend bill or file replication within three weeks.

—1.—*Fletcher v. Ramsden*—Objection to sufficiency of Prerogative Court probate in administration suit overruled.

—1.—*Waldron v. Sloper*—Claim dismissed with costs.

Vice-Chancellor Parker.

Fitch v. Prior. May 5, 1852.

EXECUTION.—AGAINST GOODS OF MARRIED

WOMAN WITH SEPARATE PROPERTY.—INJUNCTION.

A married woman was possessed of furniture, &c., to her separate use, and she lived apart from her husband who was abroad and she had given an order for coals to be supplied for the use of her establishment. An action had been brought against the husband, and a *fi. fa.* issued on the judgment obtained, and the furniture, &c., were taken in execution by the sheriff. An injunction was granted to restrain him continuing in such execution upon the payment to the creditors of the amount of the debt, without costs.

THIS was a motion to restrain the Sheriff of Surrey from continuing in possession under a *fi. fa.* of certain household furniture and effects belonging to the plaintiff a married woman, and of which she was entitled to her separate use. It appeared that she was living apart from her husband who was abroad, and that she had ordered of the defendants, Messrs. Prior, coals for the use of her establishment, and that an action had been brought to recover the debt thereby incurred against her husband, and execution issued on the judgment obtained for the amount of debt and costs, and the sheriff had made the levy complained of.

Southgate, in support of the motion, referred to *Newlands v. Paynter*, 4 Myl. & Cr. 408.

Willcock, *contra*, contended the parties should be left to their legal rights, citing *Owens v. Dickinson*, Cr. & Ph. 48.

The Vice-Chancellor said, that upon the plaintiff paying to the defendants the amount of the debt, within four days, the injunction would issue and an interim order for the four days, referring to *Murray v. Barlee*, 3 Myl. & K. 209.

May 26.—*Martin v. Pycroft*—Claim dismissed, without costs.

—27.—*Rae v. Butler*—Stand over.

—29.—*In re Begum Sombre's Will, ex parte Solaroli and wife*—Order for appointment of new trustees.

—29.—*In re Forbes*—Order as to investment of dividends.

—27, 28, 31.—*Winch v. Birkenhead, Lancashire, and Cheshire Junction Railway Company and others*—Injunction granted.

June 1.—*In re Liverpool Marine Assurance Company, ex parte Greenshields*—Master's decision reversed inserting name on list of contributories.

—1.—*In re Sea, Fire, and Life Assurance Society, ex parte Burton*—Appeal dismissed from the Master inserting name on list of contributories.

Court of Queen's Bench.

Regina v. Wilson. April 21, 1852.

COMPLAINT FOR NON-RESTORATION OF ROAD AGAINST RAILWAY COMPANY.—MANDAMUS ON JUSTICES.—PERSON HAVING MANAGEMENT OF ROAD.

D. L. had dedicated a road to the public, but

the parish had not taken any steps towards accepting the dedication, and he had on one occasion repaired it: Held, on demurrer to the return to a mandamus on justices to hear the complaint of D. L. under the 8 & 9 Vict. c. 20, s. 57, that he was not a "person having the management of the road" within that section, to entitle him to proceed against a railway company for not restoring it to the condition it was in before they interfered therewith.

A MANDAMUS had issued in this case on the defendant to hear a complaint under the 8 & 9 Vict. c. 20, s. 57, against a railway company for not restoring a road with which they had interfered. The complaint had been preferred by Mr. D. Lewis, who claimed to have the management of the road, and who had dedicated it to the public, although no steps had been taken by the parish to accept such dedication, and he had also on one occasion repaired it.

By s. 57, it is enacted, that if any road that has been interfered with by the works of a railway company "be not so restored, or the substituted road so completed as aforesaid, within the periods herein or in the special act fixed for that purpose, the company shall forfeit to the trustees, commissioners, surveyor, or other person having the management of the road interfered with by the company, if a public road, or if a private road, to the owner thereof, 5*l.* for every day after the expiration of such periods respectively, during which such road shall not be so restored, or the substituted road completed."

Needham and Raymond now appeared for Mr. Lewis, in support of a demurrer to the return to the mandamus, and urged he was entitled to recover the penalty; *Watson, Q. C.*, in support, was not heard.

The Court said, the persons having the management of roads in the act, meant persons *cjusdem generis*, as trustees, &c., and that as Mr. Lewis did not fill any one of those characters, the judgment must be for the defendant.

May 26.—*Regina v. Avery*—Rule discharged to enter verdict for the Crown.

— 27.—*Regina v. Manchester and Southport Railway Company*—Rule nisi for mandamus on defendants to complete line.

— 27.—*Regina v. Manchester, Sheffield, and Lincolnshire Railway Company*—Rule absolute for mandamus on defendants to take up award under 8 Vict. c. 18, for lands taken.

— 27.—*Lowe v. London and North Western Railway Company*—Rule discharged to enter a nonsuit or for new trial.

— 28.—*Tallis v. Tallis*—Leave to amend.

— 28.—*Regina (ex parte Death) v. Vice-Chancellor of Cambridge and others*—Rule for prohibition refused.

— 29.—*Regina v. Street*—On certiorari, order quashed of Poor Law Auditor disallowing costs of overseers incurred in endeavour to support poor-rate on railway company.

— 29.—*Regina v. Overseers of Salford*—Certiorari quashed to quash licence to sell beer,

&c., granted by Office of Excise, with costs.

May 31.—*Regina (ex parte Napier) v. East India Company*—Cur. ad. vult.

June 1.—*Hook v. Laslett*—Judgment on special case from Chancery as to construction of codicil.

— 1.—*Mr Kenzie v. Shannon and Sligo Railway Company*—Cur. ad. vult.

Queen's Bench Practice Court.

(Coram Mr. Justice Wightman.)

Regina v. Major. May 27, 1852.

INDICTMENT FOR PERJURY.—PROSECUTOR'S COSTS.—"PARTY GRIEVED OR INJURED."

An indictment for perjury committed in falsely making an affidavit in Chancery, in reference to a statement alleging that the defendant was indebted to the estate of a testatrix, as surviving executor, of which the executors' tutor was co-executor, was removed by certiorari into this Court. The prisoner was convicted and sentenced: Held, that the executors, who were the prosecutors, were parties "grieved or injured" within the 5 & 6 W. and M. c. 11, s. 3, and a rule was refused to set aside a side-bar rule for the taxation of their costs.

THIS was a motion for a rule nisi to set aside with costs the side-bar rule, obtained to tax the prosecutors' costs of this indictment, for perjury, which had been found at the Central Criminal Court, but removed by the defendant into this Court by certiorari. Upon the trial, the defendant was convicted and sentenced to two years' imprisonment with hard labour, whereupon a side-bar rule had been obtained for the taxation of the prosecutors' costs and payment by the defendant or his bail. The perjury had been committed by the defendant swearing to a false affidavit in Chancery, in reference to a statement alleging he was indebted, as executor of the will of a testatrix to her estate, the prosecutors being executors and devisees in trust of the will of his father, who was his co-executor.

Willes in support of the rule, urged that the prosecutors were not parties "grieved or injured," under the 5 & 6 Wm. & M. c. 11, s. 3,¹ citing *Rea v. Ingleton*, 1 Wils. 139.

The Court said, that it was sufficient to render a prosecutor a party grieved within the statute, if the offence committed was such as might cause damage in any manner to the prosecutor. Here the perjury was complete, and the false swearing of the defendant obliged the prosecutors to do something to get rid of the false affidavit, and they were to a certain extent injured, a difficulty and an obstruction having been imposed. The rule would therefore be refused.

¹ Which enacts, that "if the defendant prosecuting such writ of certiorari be convicted of the offence for which he was indicted, that then the said Court of Queen's Bench shall give reasonable costs to the prosecutor, if he be the party grieved or injured."

May 28.—*Regina (ex parte Waghorn) v. Justices of Kent*—Rule nisi for certiorari to bring up conviction under 3 & 4 Vict. c. 61, s. 6.

— 29.—*Doe dem. Wright v. Roe*—Rule nisi on defendant to appear and for judgment to be signed in ejectment.

June 1.—*Regina v. Broome and others*—Certiorari refused to bring up indictment into this Court.

Common Pleas.

Addison v. Mayor, &c., of Preston. April 20, 21, 1852.

MUNICIPAL CORPORATIONS' ACT.—SALARY OF RECORDER.—ACTION OF DEBT.

Held, on special case, that the recorder of a borough Court of Record was not entitled to recover the amount of his salary from the corporation in an action of debt, but semble, he must compel the borough council to raise a rate for its payment.

It appeared that the plaintiff, who was Recorder of Preston, had been appointed in the year 1836 assessor of the Court of Record by the council during good behaviour, his salary being fixed at 50 guineas, and which was paid up to 1849, when the number of causes having considerably diminished in consequence of the coming into operation of the 9 & 10 Vict. c. 95, they passed a resolution reducing the salary to 10 guineas a year. The plaintiff, however, refused to accept this, and brought this action in debt to recover his salary of 50 guineas as assessor for the year 1850, and it now came on in the form of a special case for the opinion of this Court.

By s. 92 of the 5 & 6 W. 4, c. 76, (the Municipal Corporations' Act,) the borough fund was to be "applied towards the payment of the salary of the mayor and of the recorder," &c., "and of every other officer whom the town council shall appoint;" "and in case the borough fund shall not be sufficient for the purposes aforesaid, the council of the borough is hereby authorised and required from time to time to estimate, as correctly as may be, what amount, in addition to such fund, will be sufficient for the payment of the expenses to be incurred in carrying into effect the provisions of this act; and in order to raise the amount so estimated the said council is hereby authorised and required from time to time to order a borough rate in the nature of a county rate to be made within their borough."

By s. 9 of the 6 & 7 W. 4, c. 105, "every recorder or person so appointed to hold such Court shall be entitled to have such salary paid to him out of the borough fund as the council shall fix by some bye-law to be made in that behalf."

Henderson and George Denman for the plaintiff; *Byles, S. L., and Segar* for the defendants.

The Court said, it had been admitted that the action of debt could not be maintained by any implied contract between the parties, nor unless there was a legal right in the plaintiff to receive his salary, and a legal duty on the part

of the defendants to pay it out of their corporate property. When the corporation took on themselves the obligation of paying salaries to their officers, they took also the obligation to pay them out of a particular fund, but they were not therefore personally liable to pay this particular debt out of the corporate property, and the plaintiff must therefore be left to his prerogative right to compel the borough council to raise a rate to pay him. And the judgment must be for the defendants.

May 26.—*Wadsworth v. Weaver*—Rule refused to enter verdict for plaintiff.

— 26.—*Holmes v. London and North Western Railway Company*—Motion refused for leave to add plea.

— 27.—*Dalby v. India and London Life Assurance Company*—Rule enlarged in order to tender bill of exceptions.

— 28.—*Edwards v. Champion*—Stand over.

— 31.—*In re Stevenson*—Rule nisi on attorney to deliver bill of costs.

— 31.—*In re Cobbett*—Rule refused for *habeas corpus*.

— 31.—*Esparte Scott*—Rule nisi under Fines and Recoveries Act to enable married woman to transfer land held in her own right.

— 31.—*Johnson v. Lansley*—Rule discharged for new trial.

— 31.—*Edwards and another v. Great Western Railway Company*—Rule refused for review of taxation.

June 1.—*Doe dem Robertson v. Gardiner*—*Cur. ad. vult.*

Court of Exchequer.

Tambisco v. Pacifico. June 1, 1852.

ACTION BY FOREIGNER TEMPORARILY RESIDENT IN ENGLAND.—SECURITY FOR COSTS.

A rule was discharged on the plaintiff, who was a foreigner but resident in this country, to give security for costs.

THIS was a rule nisi on the plaintiff, who was a native of Athens, but temporarily resident in this country, to give security for the costs of this action. It appeared from the plaintiff's affidavit, that he intended to remain in this country until judgment had been obtained therein. An application had been made to a Judge at Chambers and refused.

Willes showed cause against the rule, and referred to *Dowling v. Harman*, 6 M. & W. 131.

Jones, in support, cited *Oliou v. Johnson*, 5 B. & Ald. 908; *Gurney v. Key*, 3 Dowl. P. C. 559.

The Court said, that the practice of calling on foreigners to find security for costs was confined to those cases where they were actually abroad and out of the jurisdiction, and that the question of their intention or probable duration of residence in this country could not be entered upon. If a foreigner was here, he had the rights of an Englishman and was entitled to resort to the Civil Courts without giving se-

curity for costs. The rule was therefore discharged. — Judgment for respondents, without costs.

May 26.—*Hill v. Philp*—Rule discharged to set aside verdict for defendant, and for new trial.

— 27.—*Holmes v. Sixsmiths*—Rule discharged to enter a nonsuit.

— 27.—*Coe v. Platt and another*—*Cur. ad. vult.*

— 27.—*South Eastern Railway Company v. South Western Railway Company*—Stand over for bill of exceptions to be tendered to ruling of presiding Judge.

— 28.—*M'Kinnon v. Penson*—*Cur. ad. vult.*

— 31.—*Governor of Bedford Infirmary v. Commissioners of Bedford Improvement*—Judgment for respondent on special case, without costs.

— 31.—*Guardians of Poor of Bedford Union v. Commissioners of Bedford Improve-*

Court of Exchequer Chamber.

May 29.—*Regina v. Ion*—Conviction affirmed.

— 29.—*Regina v. Perkins*—Conviction reversed.

— 29.—*Regina v. Nash*—Conviction affirmed.

— 29.—*Regina v. Oldham*—Conviction affirmed.

— 29.—*Regina v. Mitchell and others*—Sentence affirmed.

June 1.—*Eastern Union Railway Company v. Hart and another*—Judgment of the Court of Queen's Bench affirmed.

— 1.—*Macgregor v. Official Manager of Dover and Deal Railway Company*—Judgment reversed of the Court of Queen's Bench.

ANALYTICAL DIGEST OF CASES,

REPORTED IN ALL THE COURTS.

Courts of Equity.

[For the previous Sections of the Digest in this Volume, see

Privy Council: Appeals, p. 17.

House of Lords: Appeals, p. 38.]

CONSTRUCTION OF STATUTES.

LANDS' CLAUSES' CONSOLIDATION ACT.

1. *Railway company. — Jurisdiction. — Demurrer. — Notice to take land.*—A railway company gave notice of their intention to take land, and a claim was sent in, which was afterwards abandoned, and repudiated by both parties. The company then proceeded under the 68th and 85th sections of the Lands' Clauses' Consolidation Act, to take possession. The owner of the land might either apply for a mandamus to compel the company to take steps to summon a jury, or might send in a claim, which, under the 85th section, the company must either pay, or summon a jury within 21 days; but a bill treating the first notice as constituting a contract, and praying for the specific performance of it, was held, upon demurrer, not to be sustainable. *Adams v. London and Blackwall Railway Company*, 2 H. & T. 285; 2 M'N. & G. 118.

The provisions of the 68th section of the above Act apply to the case of land taken under those of the 85th section. *Adams v. London and Blackwall Railway Company*, 2 M'N. & G. 118.

2. *Payment into bank of amount claimed by landowner. — Equity.*—The owner of certain land required by a railway company, on being served with the usual notice, stated his desire to have the amount to be paid to him for compensation and damages settled by arbitration, under the provisions of the Lands' Clauses' Consolidation Act, 1845. Arbitrators were accordingly appointed by the landowner and the company, and, these arbitrators not being able

to agree upon an umpire, an umpire was ultimately appointed by the Commissioners of Railways. In the meantime, the company having paid into the bank the amount claimed by the landowner, and having given the bond required in such cases by the Act, entered upon the land. The arbitrators not having made their award in time, the questions of compensation and damage came before the umpire, who made his award, giving the landowner a much less sum than that claimed by him from the company. The landowner having refused to deliver an abstract of title or to take any steps for conveying the land, the company proceeded under the provisions of the Act applicable to such a case, and paid into the bank the sum awarded by the umpire. They then presented a petition for payment out to them of the sum paid in by them before taking possession of the land. The landowner in the meantime had taken proceedings at law to set aside the award on various grounds but without success, and was at the time when the petition was presented prosecuting an action against the company, to recover the amount originally claimed by him. Under these circumstances, the landowner opposed the petition of the company: but the Lord Chancellor made the order prayed, holding, that the landowner was not entitled to avail himself of the security provided by the Act in the deposit of the money, and at the same time to repudiate the proceeding, the benefit of the result of which it was the object of the Act thus to secure to him. *In re Wills, Somerset, and Weymouth Railway Act, in re Fooks*, 2 M'N. & G. 357.

3. *Construction of 68th section. — Lands "injuriously affected."*—The words "injuriously affected" in the 68th section of the Lands' Clauses' Consolidation Act (8 Vict. c. 18), comprehend cases of injury independent of

taking land, and are not limited to damage sustained by persons whose lands, or a part of whose lands are taken, used, or directly interfered with, and the right to compensation extends to and may be asserted in respect of consequential damage.

A lessee of premises not required for the purpose of a railway, served a notice and claim upon the company, for a certain amount of compensation under the 68th section of the Lands' Clauses' Consolidation Act. The alleged injuries resulted from the dust and dirt occasioned by the works of the railway, from the temporary diversion of a footpath which passed along the premises of the claimant, and from the stoppage of a lane along which he claimed to be entitled to a right of way to the back of his premises. The company filed their bill, and obtained an injunction to restrain any further proceedings under the notice: *Held*, dissolving an injunction which had been granted by the Vice-Chancellor Wigram, that the claimant was entitled to proceed under the notice, and to have the amount of compensation assessed by a jury.

By summoning a jury to assess the amount of compensation claimed by a party under the 68th section, the company is not precluded from questioning the right of the claimant to any compensation whatever.

The jury have jurisdiction to construe the Act upon the point whether the claim made is within its provisions. *East and West India Docks and Birmingham Junction Railway Company v. Gattke*, 3 M.N. & G. 155.

Cases cited in the judgment: *Regina v. Eastern Counties Railway Company*, 2 Q. R. 347; 3 Rail. Ca. 466; *Corrigal v. London and Blackwall Railway Company*, 5 M. & G. 219; 6 Q. B. 759; *Williams v. Jones*, 13 M. & W. 628.

4. *Injuriously affected.*—*Construction of the 68th section.*—*Injunction.*—The words "injuriously affected" in the 68th section of the Lands' Clauses' Consolidation Act, 1845, (8 Vict. c. 18), comprehend cases of damage arising from the user of the railway as well as of damage sustained in the construction of the railway.

Injunction obtained by a company restraining a landowner from taking proceedings under the Act in respect of such damage, dissolved. *London and North Western Railway Company v. Bradley*, 8 M.N. & G. 336.

5. *Appeal.*—*Rights of parties, how affected by lapse of time pending appeal.*—The Vice-Chancellor, acting on the authority of the *London and North Western Railway Company v. Smith*, 1 M.N. & G. 216, granted an *ex parte* injunction on the application of a railway company restraining the landowner from taking proceedings under the 68th section of the Lands' Clauses' Consolidation Act, 1845, for settling the amount of compensation to be paid to him by the company: his Honour subsequently dissolved the injunction at the instance of the defendant, on the authority of the *East and West India Docks and Birmingham Junction*

Railway Company v. Gattke, 3 M.N. & G. 155,—in the meanwhile, the time limited for taking proceedings under the 68th section had expired. The company, who had not raised the question before the Vice-Chancellor, appealed from the order dissolving the injunction, on the ground that it ought to have been made on such terms as that their rights to take proceedings under the 68th section might not be affected by the lapse of time. The Lord Chancellor refused the application. *South Staffordshire Railway Company v. Hall*, 3 M.N. & G. 353.

Case cited: *Marquis of Waterford v. Knight*, 11 Cl. & Fin. 633.

6. *Compensation for obstructing approach to warehouse adjoining harbour.*—*Costs.*—An incorporated company were improving a harbour under the powers of an act, whereof the provisions of the Lands' Clauses' Consolidation Act, 1845, were made part. In the course of the works, a coffer-dam was made, which temporarily prevented ships from approaching so near the warehouses adjoining the harbour as they had been accustomed to do. A lessee of such a warehouse claimed compensation for the damage thus occasioned to him to the amount of 65*l.*, or to have the same ascertained by arbitration. The Court refused to grant an injunction restraining him from proceeding under the compensation clauses of the Lands' Clauses' Consolidation Act.

Where a bill had been filed by a company for an injunction in the circumstances above stated, and on an appeal from an order dismissing bill with costs, the cause was, by consent, treated as having come on regularly to be heard, the Court held that the suit was justified by the decision in *London and North Western Railway Company v. Smith*, 1 M.N. & G. 216, and gave no costs, but gave the defendant leave to apply as to costs if he succeeded in obtaining compensation. *Sutton Harbour Improvement Company v. Hitchens*, 1 De G., M.N. & G. 161.

Case cited in the judgment: *Robinson v. Rosher*, 1 Y. & C., C. C. 7.

7. *Nomination by company of arbitrator under protest.*—*Effect of.*—*Semble*, that a company does not, by nominating under protest an arbitrator in pursuance of the Lands' Clauses' Consolidation Act, 1845, admit that the case is one entitling the claimant to any compensation. *Sutton Harbour Improvement Company v. Hitchens*, 1 De G., M.N. & G. 161.

8. *Mortgage.*—*Compulsory purchase.*—*Injunction.*—Some property was mortgaged to the plaintiffs, who were not bound to receive their money until a future day. A railway company, with knowledge, treated with the mortgagor alone, and, not agreeing, paid into Court, to the credit of the mortgagor, the amount of compensation, but made no provision for the compensation to the mortgagees under the 8 & 9 Vict. c. 18, s. 114. The company then took possession, and commenced pulling down the building. The Court restrained the company from proceeding, until

the value of the mortgagees' interests had been ascertained and paid or secured. *Rancken v. East and West India Docks and Birmingham Junction Railway Company*, 12 Beav. 293.

9. *Railway.—Rector.—Inclosure act.—Expenses.*—Under an inclosure act, some lands were allotted to a rector, who had a power of selling to pay the expenses. Under a railway act, compensation was made in respect of other lands of the rector, and paid into Court. The Court sanctioned the application of the money in Court to the payment of the expenses of the inclosure. *Ex parte Lockwood, in re Oxford, Worcester, &c., Railway Company*, 14 Beav. 158.

Case cited: *Ex parte Queen's College, Cambridge*, 14 Beav. 159, n.

10. *Railway.—Copyhold.—Trustee act.—Costs.*—A. was tenant of a copyhold, in trust for B. A. died, leaving an infant heir; B. sold a part of the property to a railway company: *Held*, that the company were not, under the 82nd section of the Lands' Clauses' Consolidation Act, liable to pay the costs of proceedings under the Trustee Act, to obtain a conveyance from the infant. *In re South Wales Railway Company*, 14 Beav. 418.

11. *Compensation.—Tenant for life.—Apportionment.*—A dean and chapter, and their lessees for 21 years, under covenant not to assign without their leave, entered into a joint contract for sale of part of the demised premises to a railway company, at an aggregate price. On the completion of the purchase, and the conveyance of the property to the company, they paid the amount into Court, under the Lands' Clauses' Consolidation Act, 1845, s. 69. The Court declined, upon the petition of the lessees, to apportion the purchase-money. By consent, the money was ordered to be invested, and the dividends to be paid to the lessees for his term, or until further order: *Held*, that the company were not entitled to their costs and expenses upon such petition. *Ex parte Ward, in re Midland Railways Act*, 2 De G. & S. 4.

12. *Surveyor of railway.—Appointment as arbitrator.—Waiver.*—The surveyor of a railway company had, in that character, treated with a landowner, and offered a price for land required by the company. He was subsequently named by the company, and acted as their arbitrator upon an arbitration under the Lands' Clauses' Consolidation Act, 1845: *Held*, that he ought not to have been selected as an arbitrator. But the landowner knowing the fact, and, though protesting against the propriety of the appointment, proceeding with the arbitration, was held to have waived the objection. *In re Elliot and the South Devon Railway Company*, 2 De G. & S. 17.

13. *What insufficient ground for setting aside award.*—A surveyor to, and shareholder in, a railway company closely connected in interest with, and holding many shares in another railway company, upon an arbitration between the latter company and a landowner, under the

Lands' Clauses' Consolidation Act, 1845, was appointed umpire by the arbitrators, and as umpire made his award. The landowner first discovered that the umpire was such surveyor and shareholder after the date of the award, and obtained an order nisi to set aside the award on that ground: *Held*, that whatever objections there might be, in point of delicacy, to the appointment of such an umpire, they did not constitute sufficient grounds for setting aside the award. *In re Elliot and the South Devon Railway Company*, 2 De G. & S. 17.

14. *Arbitration.—Secondary evidence of submission.—Making it a rule of Court.*—Where the owners of land, which was required by a railway company, had made an appointment of an arbitrator, under the Lands' Clauses' Consolidation Act, 1845, but refused to produce it for the purpose of enabling the registrar to draw up an order which had been obtained by the company, making the submission a rule of Court, the Court refused a motion on behalf of the company, that this order might be drawn up, or that the landowners might produce the appointment.

But there being in the landowners' affidavits in opposition to the motion, a statement, that their arbitrator had been duly appointed, and there being a recital to that effect in an appointment of an umpire, the Court, on a subsequent motion, ordered the submission to be made a rule of Court on that evidence, of the appointment of the landowners' arbitrator. *In re Hawley and the North Staffordshire Railway Company*, 2 De G. & S. 33.

15. *Arbitration and award.—Umpire.—Evidence taken ex parte.—Setting aside award.* A railway company and the owners of land, which was required by the company, appointed, under the Lands' Clauses' Consolidation Act, arbitrators, who appointed an umpire. The arbitrators and umpire met on the 4th of November, and adjourned to the following day. On that day the company's arbitrator did not attend. The other arbitrator and the umpire proceeded in his absence, notwithstanding the protest of the company's solicitor, and examined a witness. The company's solicitor left the meeting without examining his witnesses. No meeting was held after the 5th, nor had the company any notice to attend on the 6th, or any subsequent day. On the 22nd, the landowners' solicitor informed the umpire that the arbitrators had not made an award, and required him to make his award, which he did on the 29th, without any evidence on the part of the company having been given.

Held, 1st. That it must be presumed that the evidence taken *ex parte* on the 5th of November, was not disregarded by the umpire.

2ndly. That it was not a just inference from the above facts, that the company had no evidence to adduce, or did not wish to adduce any.

3rdly. That whether there is or not any general rule that an umpire need not receive evidence, or be active in summoning the parties, the umpire, in the above circumstances, ought to have made no award without tender-

ing to the company an opportunity of producing evidence before him, or addressing him.

4thly. That he was bound to take up the proceedings *de novo*, or from the close of the 4th of November.

5thly. That, in the above circumstances, his skill or competency to decide from personal observation made no difference.

6thly. That his award was consequently bad, and ought to be set aside. *In re Hawley, and the North Staffordshire Rail. Co.*, 2 De G. & S. 33.

16. *Form of bond.—Entry on part only of lands included in notice under sec. 18.*—A railway company gave notice of their intention to take ten pieces of land, authorised to be taken by their special act, according to the 18th sect. of the Lands' Clauses' Consolidation Act. They afterwards entered upon eight of such pieces only, and had them valued, and deposited the amount of valuation in the Bank, and gave security by bond under their corporate seal, but without sureties, to the landowners, under the 85th section.

Held, 1st. That the company could not enter on less than all the lands comprised in their original notice, and deposit the value of, and give security for such less quantity. 2ndly. That two sureties were required, as well when the bond is given by a corporation as by an individual.

Seem, that the several bond of the company and joint bond of the justices is insufficient. *Barker v. North Staffordshire Railway Company*, 2 De G. & S. 55.

17. *Conditions of 85th section complied with by company.—Landowner.*—It is generally incumbent on a company seeking to avail themselves of the provisions of the 85th section of the Lands' Clauses' Consolidation Act, 1845, to show satisfactorily and clearly that they have fulfilled its conditions and complied with its requisitions; and if there is room for doubt, the landed proprietor should have the benefit of the doubt. *Barker v. North Staffordshire Railway Company*, 2 De G. & S. 55.

18. *Injunction.—Manufactory.—Supplemental Bill.*—Certain landowners, by their original bill, sought to restrain a railway company from entering on and taking eight out of the ten pieces of land which they had originally given notice of their intention to take. Having obtained an injunction on this bill, they filed a supplemental bill, alleging that the ten pieces formed part of a "manufactory" within sect. 92 of the Lands' Clauses' Consolidation Act, 1845, and praying for an injunction restraining the company from taking possession or assessing the value of the ten pieces before a jury, without taking the whole "manufactory." The Court granted an injunction to that effect, putting the landowners upon terms to concur, upon the request of the company, in speedily taking the opinion of a Court of Law, whether the pieces, of which notice to take was given, were parts of a "manufactory" within the meaning of sect. 92; but the Lord Chancellor, on appeal, held the landowners not entitled under the circumstances to the last mentioned

injunction. *Barker v. North Staffordshire Railway Company*, 2 De G. & S. 55.

19. *Railway Company.—Powers of Company to take lands.—Injunction.*—The time within which a railway company was authorised to take lands, expired on the 4th of August, 1848. Long before this period they gave notice to a landowner to treat, and afterwards delivered to the plaintiff, to whom the lands had been in the meantime devised, a bond, and paid the estimated value of the lands comprised in the notice into the Bank, under the Lands' Clauses' Consolidation Act, 1845, sect. 80. Under an amendment act, the powers of which extended beyond 1848, the company were authorised to take the land included in the notice, and on August 3rd, 1848, they gave a notice to the plaintiff that, in pursuance of the powers of both those acts, they intended to take the lands. After the 4th of August, 1848, but without taking any further steps under the acts, the company entered upon the land. On a motion for an injunction, the Court declined to interfere, on the ground that although the company might not be then entitled to take possession under their compulsory powers, they were able, by some proceeding under the second act, to obtain the land, and the motion was ordered to stand over, with liberty to the plaintiff to bring an action. *Williams v. South Wales Railway Co.*, 3 De G. & S. 354.

20. *Injunction.—Expiration of compulsory powers.*—On an application for an injunction to restrain a railway company from taking proceedings to summon a jury under the compulsory clauses of the Lands' Clauses' Consolidation Act, 1845, the Court thought that the plaintiff would have been entitled to an injunction, but for the circumstance that the time limited for the exercise of the compulsory powers was on the point of expiring; but that the doubt as to the validity of such proceedings after that period, although the usual notice had been given of the intention of the company to take the land, was sufficient ground for declining to grant the injunction, on the company undertaking not to act on the result of the jury process without the leave of the Court, and bringing into Court 200*l.* to answer the plaintiff's costs and charges by reason of the process, without prejudice to any question. *Wood v. North Staffordshire Railway Company*, 3 De G. & S. 368.

21. *Entry on building, part of manufactory.—Bill by lessee for injunction.—Superior landlord or sub-lessee not a party.—Validity of bond.*—A railway company, under the powers of the Lands' Clauses' Consolidation Act, 1845, gave the usual notice of reference to a jury to assess the value of a portion of a house, shop, and outbuildings, which had been occupied together, coffee being roasted in the outbuildings and sold in the shop. They gave a bond to the lessee, her heirs, executors, administrators, and assigns, and paid into Court 600*l.*, the amount at which the value of the buildings taken by them had been estimated, under the provisions of the Act; they then proceeded to enter into

possession, and to pull down the buildings. The lessee filed her bill, to which neither the superior landlord nor her sub-lessee was a party, for an injunction to restrain the company from continuing in possession of the buildings, on two grounds: 1st, that the buildings taken were part of a manufactory, and could not be taken without the rest; and 2ndly, that the bond given was invalid, by reason of its being conditioned for payment of the sum specified to the heirs, executors, administrators, or assignees of the lessee. On a motion for the injunction, the Court considered that there was a serious question to be tried at law, whether the whole proceedings of the company had not been illegal; yet, as the only complaining party was not in the occupation of the premises, and was not liable to personal inconvenience pending the litigation at law, and as the company, in any event, was entitled to take the property, forbore to grant an injunction, upon the company paying into Court a further sum of 600*l.*, and undertaking to abide by each order as the Court might make as to proceeding before a jury under the notice they had given, and as to the possession of the buildings. *Dukin v. London and North Western Railway Company*, 3 De G. & S. 414.

22. *Successive notices of taking lands*, s. 28. — A railway company, empowered to take lands for the purposes of the undertaking, is not restricted by the Lands' Clauses' Consolidation Act to one notice, but may, after a notice for taking certain lands, give a further notice for taking other lands within the prescribed limits, — such additional lands being necessary for the works. *Stamps v. Birmingham, Wolverhampton, and Stour Valley Railway Company*, 7 Hare, 251.

Case cited in the judgment: *Webb v. Manchester and Leeds Railway Company*, 4 My. & Cr. 116.

23. *Date of award, bond and payment*, s. 85. — The proceedings under the 85th section of the Lands' Clauses' Consolidation Act are not necessarily invalid because the award was signed on a day subsequent to the day on which the money was paid into Court, and the bond given. *Stamps v. Birmingham, Wolverhampton, and Stour Valley Railway Company*, 7 Hare, 256.

24. *Railway Clauses' Act. — Lands injuriously affected. — Time of payment of compensation.* — In the case of damage to a party whose lands are not entered upon, but are injuriously affected by the exercise of the powers of a railway company upon their own lands, or upon the lands of another party, and for which damage compensation is required to be made by section 6 of the Railway Clauses' Consolidation Act, (8 Vict. c. 20,) it is not unlawful for the company to execute the works which occasion the damage, before the amount of compensation for the same is ascertained, paid, or deposited. *Hutton v. London and South Western Railway Company*, 7 Hare, 259.

Case cited in the judgment: *Lister v. Lobbey*, 7 A. & E. 124.

25. *Where power under two acts to purchase compulsorily same land.* — *Quære*, as to the effect of two acts of Parliament, conferring on different companies the right of purchasing compulsorily, according to the provisions of the Lands' Clauses' Consolidation Act, the same plot of land. *Manchester, Sheffield, and Lincolnshire Railway Company v. Great Northern Railway Company*, 9 Hare, 284.

26. *"Wilful refusal," under section 80. — Where owner believes award to be invalid.* — A landowner refused to accept the purchase-money awarded to be paid to him by a railway company, because he believed the award to be invalid in law. The Judges of the Court of Queen's Bench, after hearing the question argued at great length, and taking time to consider their judgment, decided that the award was valid.

Held, that the landowner's refusal to receive the money, was not a wilful refusal within the meaning of the 80th section of the Lands' Clauses' Act. *In re East India Docks and Birmingham Junction Railway Act, ex parte Bradshaw*, 16 Sim. 147.

27. *"Wilful refusal."* — As to what amounts to a "wilful refusal" within the Lands' Clauses' Consolidation Act. *In re Windsor, Staines, and South Western Railway Company*, 12 Beav. 522.

Case cited: *Ex parte Bradshaw*, 16 Sim. 174.

28. *Liverpool Dock Acts. — Re-investment of compensation-money in copyholds.* — Money paid into Court by the Liverpool Dock Trustees, in respect of leaseholds for years, taken by them under the powers of their act of Parliament, ordered to be re-invested in the purchase of copyholds of inheritance. *In re Liverpool Dock Acts*, 1 Sim. N. S., 202.

29. *Re-investment of compensation-money, where owner imbecile. — Conversion.* — Money paid into Court, by a railway company, for land taken, under the Lands' Clauses' Act, from a person who was in a state of mental imbecility, and who continued in that state until his death, but was not the subject of a commission of lunacy, ordered, after his death, not to be re-invested or considered as land, but to be paid to his executors. *In re East Lincolnshire Railway Act; In re Cross's Estate, ex parte Flamank*, 1 Sim. N. S., 260.

30. *Injunction. — Proceeding in pursuance of notice under s. 68. — Held*, notwithstanding the decision in *The London and North Western Railway Company v. Smith*, 1 H. & T. 161; 1 M'N. & G. 216, that a person who has served a railway company with notice under the 68th section of the Lands' Clauses' Act, claiming compensation on the ground that his land has been injuriously affected by the execution of the company's works, ought not to be restrained from proceeding pursuant to his notice. *South Staffordshire Railway Company v. Hall*, 1 Sim. N. S. 373.

Case cited in the judgment: *East and West India Docks and Birmingham Junction Railway Company v. Gatto*, 3 M'N. & G. 155.

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SATURDAY, JUNE 12, 1852.  
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CONCLUSION OF TRINITY TERM. PROSPECTS OF THE PROFESSION.

TRINITY TERM terminates this day under circumstances sufficiently remarkable to justify more than a passing allusion.

So far as regards the proceedings of the Courts, the Term has been chiefly distinguished for its unvaried dullness and the paucity of judicial decisions of an important character. The only case decided during the Term in the Equity Courts which excited any attention beyond the precincts of Westminster Hall, was the judgment of Lord St. Leonards in *Lumley v. Wagner* confirming the order for an injunction restraining the defendant from singing in public during the present season, without the permission of the plaintiff. The only question raised in this case involving a principle was, whether when a contract consists of matter of positive obligation and also of an agreement *not* to do something, a Court of Equity will interfere to restrain the breach of the negative agreement without being competent to enforce performance of the positive obligation? This question may now be considered as settled in conformity with what justice and common sense would dictate. A Court of Equity, it is presumed, will not again be asked to refuse to exercise its authority to prevent a wrong, merely because it has not the power to give full effect to the rights of the complainant party.

In the Common Law Courts, we cannot remember any decision of more importance than that which took place in *Hove v. Barber*, where the Court of Queen's Bench affirmed the Master's taxation allowing a sum of 40*l.* to a successful plaintiff, examined on his own behalf at the trial, for subsistence money from the date when he issued his writ until the day his cause was

tried. As the Law of Evidence Amendment Act renders a party a competent witness, the Court thought the Master entitled to exercise his discretion in allowing such a party, when witness, his necessary expenses upon the principles applied to the taxation of the costs of ordinary witnesses.

It is impossible to pass a day in any of the Courts at Westminster Hall, without feeling that the spirit, which prevails abroad with respect to the expediency of diminishing the unnecessary expenses of litigation, and discouraging technical objections irrespective of the merits, has at length taken full possession of the judicial Bench. The Lord Chief Baron formally announced, a few days since, that the Bar was to understand the Court would set its face generally against objections calculated to increase the expenses of parties by postponing the decision of the real question in dispute. Although the Judges are now going with the tide, it must not be forgotten that they sanctioned by their decisions many of those subtle niceties which tended to render the system of pleading and procedure so offensive to the good sense of the general community.

The decline of business in the Common Law Courts was not apparent to ordinary observers whilst any arrear remained to be disposed of, but it has now become manifest and unequivocal. There is no arrear in any of the Courts of Law. The New Trial Paper and the Special Paper—once so formidable—are both exhausted. On two occasions during the Term, the Judges of the Court of Common Pleas took their seats only for a few minutes, having no business waiting for hearing. For the first time since the passing of the Act 1 & 2 Vict. c. 32, the Common Law Courts, (with the exception of the Queen's Bench, which conditionally announced a sitting for two

days,) are to have no Sittings in Banc after Trinity Term. It would have been idle to appoint Sittings when no causes remained to be disposed of. So far the public have nothing to complain of. The old causes are worked up. If a rule for a new trial is granted, it is finally disposed of as soon as the rule is returnable, and one of the most crying grievances with reference to the procedure of the Common Law Courts,—that arising from the delays which occurred at certain stages, when a cause got into the New Trial or Demurrer Paper,—has no longer any foundation.

Still, the question suggests itself, if the business of the Common Law Courts does not increase, but continues sensibly to decline, whether the public can fairly be called upon to sustain institutions of such magnitude—the maintenance of which is necessarily attended with great expense—when the business for which those tribunals were established is transferred to other Courts? The discussion of this question, it is generally felt, can only be postponed until the reforms about to be introduced in the system of practice, pleading, and procedure in the Common Law Courts come into full operation. If the amendments about to be effected in Common Law practice by the Bill now in Parliament do not multiply the number of causes commenced in the Superior Courts of Law, and in that manner augment the business, the Judges and officers of the Common Law Courts will cease to be fully employed, and their number must speedily be reduced. There can be little doubt that the Common Law Procedure Bill would materially increase the business of the Common Law Courts, if, in every case in which the subject-matter of action was above 5*l.*, the Public were free to choose between the Superior Courts and the County Courts. As our readers are aware, however, in the most numerous class of actions, suitors are interdicted from resorting to the Superior Tribunal, and compelled, under what is equivalent to a penalty—the loss of all costs and expenses—to bring their suits in the County Courts. Under the Common Law Procedure Bill, it is competent for a plaintiff, in all cases in which the sum sought to be recovered is a fixed sum in the nature of a debt, and where the defendant is not minded to contest the claim, to sign final judgment at the end of eight days without any further expense than that incidental to the issuing and service of the writ and the entry of the judgment. In the year 1846, when the

County Courts' Act obtained the Royal Assent, and before it came into operation, the total number of actions commenced in the Superior Courts was 129,500, and in 64,165 of those actions no appearance was entered. Under the operation of the Bill now before Parliament, in all actions of this nature, which are not litigated, judgment may be obtained in the Superior Courts at much less expense and in one-third of the time in which the same result can be arrived at according to the practice of the County Courts. The suitor, however, will not be permitted to avail himself of the economy of time and money secured by the improved practice of the Superior Courts, for in all cases where the County Court has jurisdiction, if the action be brought in the Superior Courts and the sum recovered does not exceed 20*l.*, the suitor in the Superior Court is deprived of his costs.¹ It is far from being certain, therefore, whether the changes about to be introduced in the practice of the Superior Courts of Law, however desirable and expedient they may be in other respects, will be productive of any increase in the business of those Courts.

The operation of the measures, about to be passed, altering the constitution and mode of procedure in the Courts of Equity, is matter of speculation upon which every variety of opinion exists. The necessity for extensive and sweeping changes appears to be universally admitted, but the expediency of some of the changes proposed is questioned by many whose opinions are entitled to respect, and who have had ample opportunity of forming a correct estimate of the value of the alterations suggested. The speculations and discussions upon these topics appear to have engaged the attention of those who frequented the Courts, during the Term which has just terminated, to a much greater degree than the passing business. It seems impossible to exclude the reflection that we are on the eve of great changes, the effect of which is necessarily involved in considerable uncertainty. The anxiety created by this feeling is combined, however, with the hope that the alterations about to be sanctioned by the Legislature may prove beneficial to the Public, and if such be their effect, there is no reason to apprehend that they can be injurious to the Legal Profession.

¹ See 9 & 10 Vict. c. 95, s. 129, and 13 & 14 Vict. c. 61, s. 11.

NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

COPYRIGHT AMENDMENT.

15 VICT. c. 12.

Partial repeal of 7 & 8 Vict. c. 12, s. 18; (sect. 1).

Her Majesty may, by Order in Council, direct that the authors of books published in foreign countries may for a limited time prevent unauthorised translations; s. 2.

Thereupon the Law of Copyright shall extend to prevent such translations; s. 3.

Her Majesty may, by Order in Council, direct that the authors of dramatic works represented in foreign countries may for a limited time prevent unauthorised translations; s. 4.

Thereupon the Law for protecting the Representation of such Pieces shall extend to prevent unauthorised translations; s. 5.

Adaptations, &c., of dramatic pieces to the English stage not prevented; s. 6.

All articles in newspapers, &c., relating to politics may be republished or translated; and also all similar articles on any subject, unless the author has notified his intention to reserve the right; s. 7.

No author to be entitled to the benefit of this act without complying with the requisitions herein specified; s. 8.

Pirated copies prohibited to be imported, except with consent of proprietor; provisions of 5 & 6 Vict. c. 45, as to forfeiture, &c., of pirated works, &c., to extend to works prohibited to be imported under this act; s. 8.

Foregoing provisions and 7 & 8 Vict. c. 12, to be read as one act; s. 10.

French translations to be protected as hereinbefore mentioned, without further Order in Council; s. 11.

Recital of 9 & 10 Vict. c. 58.

Rates of duty not to be raised during continuance of treaty, and if further reduction is made for other countries it may be extended to France; s. 12.

For removal of doubts as to construction of schedule to 9 & 10 Vict. c. 58; (s. 13.)

Recital of 8 G. 2, c. 13; 7 G. 3, c. 38; 17 G. 3, c. 57; 6 & 7 W. 4, c. 59. For removal of doubts as to the provisions of the said Acts including lithographs, prints, &c.; s. 14.

The following are the sections of the act:—

An Act to enable her Majesty to carry into effect a Convention with France on the Sub-

ject of Copyright; to extend and explain the International Copyright Acts; and to explain the Acts relating to Copyright in Engravings. [28th May, 1852.]

Whereas an Act was passed in the 7 & 8 Vict. c. 12, intituled "An Act to amend the Law relating to International Copyright," hereinafter called "The International Copyright Act;" And whereas a convention has lately been concluded between her Majesty and the French Republic, for extending in each country the enjoyment of copyright in works of literature and the fine arts first published in the other, and for certain reductions of duties now levied on books, prints, and musical works published in France: And whereas certain of the stipulations on the part of her Majesty contained in the said treaty require the authority of Parliament: And whereas it is expedient that such authority should be given, and that her Majesty should be enabled to make similar stipulations in any treaty on the subject of copyright which may hereafter be concluded with any foreign power: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. The 16th section of the said Act of the 7 & 8 Vict. c. 12, shall be repealed, so far as the same is inconsistent with the provisions herein-after contained.

2. Her Majesty may, by Order in Council, direct that the authors of books which are, after a future time, to be specified in such order, published in any foreign country, to be named in such order, their executors, administrators, and assigns, shall, subject to the provisions hereinafter contained or referred to, be empowered to prevent the publication in the British dominions of any translations of such books not authorised by them, for such time as may be specified in such order, not extending beyond the expiration of five years from the time at which the authorised translations of such books hereinafter mentioned are respectively first published, and in the case of books published in parts, not extending as to each part beyond the expiration of five years from the time at which the authorised translation of such part is first published.

3. Subject to any provisions or qualifications contained in such order, and to the provisions herein contained or referred to, the laws and enactments for the time being in force for the purpose of preventing the infringement of copyright in books published in the British dominions shall be applied for the purpose of preventing the publication of translations of the books to which such order extends which are not sanctioned by the authors of such books, except only such parts of the said enactments as relate to the delivery of copies of books for the use of the British Museum, and for the use of the other libraries therein referred to.

4. Her Majesty may, by Order in Council, direct that authors of dramatic pieces which

are, after a future time, to be specified in such order, first publicly represented in any foreign country, to be named in such order, their executors, administrators, and assigns, shall, subject to the provisions hereinafter mentioned or referred to, be empowered to prevent the representation in the British dominions of any translation of such dramatic pieces not authorised by them, for such time as may be specified in such order, not extending beyond the expiration of five years from the time at which the authorised translations of such dramatic pieces herein-after mentioned are first published or publicly represented.

5. Subject to any provisions or qualifications contained in such last-mentioned order, and to the provisions hereinafter contained or referred to, the laws and enactments for the time being in force for ensuring to the author of any dramatic piece first publicly represented in the British dominions the sole liberty of representing the same shall be applied for the purpose of preventing the representation of any translations of the dramatic pieces to which such last-mentioned order extends, which are not sanctioned by the authors thereof.

6. Nothing herein contained shall be so construed as to prevent fair imitations or adaptations to the English stage of any dramatic piece or musical composition published in any foreign country.

7. Notwithstanding anything in the said International Copyright Act or in this Act contained, any article of political discussion which has been published in any newspaper or periodical in a foreign country may, if the source from which the same is taken be acknowledged, be republished or translated in any newspaper or periodical in this country; and any article relating to any other subject which has been so published as aforesaid may, if the source from which the same is taken be acknowledged, be republished or translated in like manner, unless the author has signified his intention of preserving the copyright therein, and the right of translating the same, in some conspicuous part of the newspaper or periodical in which the same was first published, in which case the same shall, without the formalities required by the next following section, receive the same protection as is by virtue of the International Copyright Act or this Act extended to books.

8. No author, or his executors, administrators, or assigns, shall be entitled to the benefit of this Act, or of any Order in Council issued in pursuance thereof, in respect of the translation of any book or dramatic piece, if the following requisitions are not complied with; (that is to say,)

1. The original work from which the translation is to be made must be registered and a copy thereof deposited in the United Kingdom in the manner required for original works by the said International Copyright Act, within three calendar months of its first publication in the foreign country :

2. The author must notify on the title-page of the original work, or if it is published in parts, on the title-page of the first part, or if there is no title-page, on some conspicuous part of the work, that it is his intention to reserve the right of translating it :

3. The translation sanctioned by the author, or a part thereof, must be published either in the country mentioned in the Order in Council by virtue of which it is to be protected or in the British dominions, not later than one year after the registration and deposit in the United Kingdom of the original work, and the whole of such translation must be published within three years of such registration and deposit :

4. Such translation must be registered and a copy thereof deposited in the United Kingdom within a time to be mentioned in that behalf in the order by which it is protected, and in the manner provided by the said International Copyright Act for the registration and deposit of original works :

5. In the case of books published in parts, each part of the original work must be registered and deposited in this country in the manner required by the said International Copyright Act within three months after the first publication thereof in the foreign country :

6. In the case of dramatic pieces the translation sanctioned by the author must be published within three calendar months of the registration of the original work :

7. The above requisitions shall apply to articles originally published in newspapers or periodicals if the same be afterwards published in a separate form, but shall not apply to such articles as originally published.

9. All Copies of any works of literature or art wherein there is any subsisting copyright by virtue of the International Copyright Act and this Act, or of any Order in Council made in pursuance of such Acts or either of them, and which are printed, reprinted, or made in any foreign country except that in which such work shall be first published, and all unauthorised translations of any book or dramatic piece the publication or public representation in the British dominions of translations whereof not authorised as in this Act mentioned shall for the time being be prevented under any Order in Council made in pursuance of this Act, are hereby absolutely prohibited to be imported into any part of the British dominions, except by or with the consent of the registered proprietor of the copyright of such work or of such book or piece, or his agent authorised in writing; and the provision of the Act of the 6 Vict. "to amend the Law of Copyright," for the forfeiture, seizure, and destruction of any printed book first published in the United Kingdom wherein there shall be copyright, and reprinted in any country out of the British dominions, and imported into any part of the British dominions by any person not being the proprietor of the copyright, or a person authorised by such proprietor, shall extend and be

applicable to all copies of any works of literature and art, and to all translations the importation whereof into any part of the British dominions is prohibited under this act.

10. The provisions hereinbefore contained shall be incorporated with the International Copyright Act, and shall be read and construed therewith as one Act.

11. And whereas her Majesty has already, by Order in Council under the said International Copyright Act, given effect to certain stipulations contained in the said Convention with the French Republic; and it is expedient that the remainder of the stipulations on the part of her Majesty in the said Convention contained should take effect from the passing of this Act without any further order in Council: during the continuance of the said Convention, and so long as the Order in Council already made under the said International Copyright Act remains in force, the provisions hereinbefore contained shall apply to the said Convention, and to translations of books and dramatic pieces which are, after the passing of this Act, published or represented in France, in the same manner as if her Majesty had issued her order in Council in pursuance of this Act for giving effect to such Convention, and had therein directed that such translations should be protected as hereinbefore mentioned for a period of five years from the date of the first publication or public representation thereof respectively, and as if a period of three months from the publication of such translation were the time mentioned in such order as the time within which the same must be registered and a copy thereof deposited in the United Kingdom.

12. And whereas an Act was passed in the 10 Vict., intitled "An Act to amend an Act of the 7 & 8 Vict., for reducing, under certain circumstances, the duties payable upon books and engravings:" And whereas by the said Convention with the French Republic it was stipulated that the duties on books, prints, and drawings published in the territories of the French Republic should be reduced to the amounts specified in the Schedule to the said Act of the 10 Vict., c. 58: And whereas her Majesty has, in pursuance of the said Convention, and in exercise of the powers given by the said Act, by Order in Council declared that such duties shall be reduced accordingly: And whereas by the said Convention it was further stipulated that the said rates of duty should not be raised during the continuance of the said Convention; and that if during the continuance of the said Convention any reduction of those rates should be made in favour of books, prints, or drawings published in any other country, such reduction should be at the same time extended to similar articles published in France: And whereas doubts are entertained whether such last-mentioned stipulations can be carried into effect without the authority of Parliament: Be it enacted, That the said rates of duty so reduced as aforesaid shall not be raised during the continuance of the said Con-

vention; and that if during the continuance of the said Convention any further reduction of such rates is made in favour of books, prints, or drawings published in any other foreign country, her Majesty may, by Order in Council, declare that such reduction shall be extended to similar articles published in France, such order to be made and published in the same manner and to be subject to the same provisions as orders made in pursuance of the said Act of the 10 Vict. c. 58.

13. And whereas doubts have arisen as to the Construction of the Schedule of the Act of the 10 Vict. c. 58:

It is hereby declared, That for the purposes of the said Act every work published in the country of export, of which part has been originally produced in the United Kingdom, shall be deemed to be and be subject to the duty payable on "works originally produced in the United Kingdom, and republished in the country of export," although it contains also original matter not produced in the United Kingdom, unless it shall be proved to the satisfaction of the Commissioners of her Majesty's Customs by the importer, consignee, or other person entering the same that such original matter is at least equal to the part of the work produced in the United Kingdom, in which case the work shall be subject only to the duty on "Works not originally produced in the United Kingdom."

14. And whereas by the four several Acts of Parliament following: (that is to say,) an Act of the 8 Geo. 2, c. 13; an Act of the 7 Geo. 3, c. 38; an Act of the 17 Geo. 3, c. 57; and an Act of the 6 & 7 Wm. 4, c. 59, provision is made for securing to every person who invents, or designs, engraves, etches, or works in mezzotinto or chiaro-oscuro, or, from his own work, design, or invention, causes or procures to be designed or engraved, etched, or worked in mezzotinto or chiaro-oscuro, any historical print or prints, or any print or prints of any portrait, conversation, landscape, or architecture, map, chart, or plan, or any other print or prints whatsoever, and to every person who engraves, etches, or works in mezzotinto or chiaro-oscuro, or causes to be engraved, etched, or worked any print taken from any picture, drawing, model, or sculpture, notwithstanding such print has not been graven or drawn from his own original design, certain copyrights therein defined: And whereas doubts are entertained whether the provisions of the said Act extends to lithographs and certain other impressions, and it is expedient to remove such doubts:

It is hereby declared, that the provisions of the said Acts are intended to include prints taken by lithography, or any other mechanical process by which prints or impressions of drawings or designs are capable of being multiplied indefinitely, and the said Acts shall be construed accordingly.

ANNUAL CERTIFICATE DUTY.

YET once more we have to remind such of our readers as are acquainted with Members of Parliament, to exert their influence and secure a full attendance of the friends of the measure on *Tuesday* next, the 15th *instant*, when Lord R. Grosvenor will renew his motion for leave to bring in the Bill to Repeal the Certificate Tax.

It is considered by the noble Lord, as well as by the promoters of the measure, that, at all events, the case should again be submitted to the House in the present Session. Its further progress will much depend on the determination to which the Government may come; and their decision will, no doubt, be mainly influenced by the prevailing opinions of the members who may be present at the debate.

If, as we trust, a large and favourable majority be in the House, the Finance Minister may be expected to declare his assent to the relief prayed for, either forthwith or early in the next Session. There is reason very confidently to believe that Sir Frederic Thesiger, the Attorney-General, who seconded Lord R. Grosvenor on all the former occasions, continues unaltered in his conviction of the justice of the claim. Again, therefore, we say, a full House should, if possible, be obtained when the motion comes on.

PROSPECTS OF THE JUNIOR BAR.

AMONGST the recent and very numerous publications relating to the state of the Bar, and the claim of a small minority of the Juniors, to act on behalf of the suitors without the intervention of the attorneys and solicitors, we have received a pamphlet, under the name of "*Thoughts of a Junior on his Position and Prospects: with a few Hints to Reformers.*"¹

The author commences by stating that—

"The position of the members of the Bar in reference to their future prospects, is at this time an anxious one, both for themselves, and also for the public at large, to whom the due administration of justice is most important. The recent Legislative enactments which have transferred the great bulk of the civil business of the country from the Superior Courts at Westminster to the various scattered tribunals of the County Courts, have already effected a material change in the present prospects of the Legal Profession; and bid fair, ere long, to remove entirely the remnant of that class of busi-

ness by which the most eminent men were first brought into notice."

After various remarks on the institution and progress of the County Courts,—their effect on the amount of business in the Superior Courts,—and the consequences which have resulted to the members of the Bar,—the learned Junior proceeds to consider the several remedies which have been suggested in order to place them in a better position.

"The first is, that the jurisdiction of the County Courts should be so far extended as to embrace suits in equity as well as in law; in brief, that the two systems of jurisprudence which have been preserved as essentially distinct for centuries, should now be amalgamated and introduced as one system into the New Courts.

"The second is, for adopting the system pursued in America, where the attorney and barrister comprise 'one firm,' the one partner seeing the clients, and the other advocating the causes in the Courts.

"The third remedy seems the only practicable one, and consists in the repeal of the clause in the County Courts' Act before referred to, and in the abolition of the existing system of etiquette, together with the permission for the barrister and his client to meet together professionally; on which point somewhat may be said on both sides."

The author dismisses the first remedy as impracticable and absurd,—merely observing that it would upset every theory on which our legal and equitable system has been built, and which it has been "the work of the most clear-headed, sagacious, and profound men for centuries past to establish." He questions, indeed, whether any approach to such a system is desirable, even in so modified a form as that which has been lately suggested, viz.—"to allow the Judges of the County Courts a Jurisdiction in District Cases of Bankruptcy, which has hitherto been confined to Courts of Equity alone."

The second remedy, he holds to be open to a two-fold objection; 1st, establishing a monopoly; and 2dly, destroying the independence of the Bar.

"That such a remedy would produce a system of monopolising interests may be inferred from the fact that, even under the present plan, the great bulk of the business falls to the lot of those who have good interest or connexion to boast of amongst our attorneys; and as they have the power of entrusting the cases in which they are concerned to the direction of counsel, they naturally select those who are identified with themselves in some degree or other, either by the ties of relationship or of interest. These are the men in the great majority of cases who become our great and lead-

¹ Published by Simpkin, Marshall, & Co.

ing counsel, if they are at all competent to discharge the duties of their Profession,—inasmuch as they gain by interest that start in the race, which others, of equal or even greater ability, in vain struggle to gain by their own exertions. What a state of affairs then would spring up if such a remedy were adopted as that here proposed. The unfortunate barrister who was excluded from taking a share or partnership in the office of an attorney from any circumstances, would literally stand no chance of ever obtaining a brief. He would be unable, by the etiquette of the Profession, to seek clients for himself, and would have no friendly attorney to introduce them; whilst those ‘firms’ which once became established, would command an immense amount of business, and exclude from its enjoyment all but their favoured partners.”

The second objection is thus stated:—

“The *quality* of partnership which would arise between the barrister and the attorney, under such a system, would gradually abolish all the distinctions which, at present, subsist between them, and reduce both branches of the Legal Profession to a mere trade; whereby the most money would have to be realised by the encouragement of litigation amongst the people. The barrister would soon cease to be very scrupulous as to the class of business, or the justice of the causes which he would be called on to advocate; and the attorney, on the other hand, would be tempted to bring as much ‘grist to the legal mill’ as he could collect, without being over particular as to the honesty of his client, or the stability of his cause.”

The learned gentleman next describes the mode in which he would open the County Courts to the Bar, *without the intervention of attorneys*. He says,—

“First, assuming that the present rule of etiquette which refers to the interviews of counsel with their clients, will speedily be abolished by consent of the Bar in spite of the objections which may be urged against such a course; as being the *only* means whereby a road may be opened to the downfall of the present monopoly. It may be desirable, perhaps, to establish a regular scale of fees in connexion with the practice in the County Courts, which should be regulated according to the amount of the debts or damages sought to be recovered in each cause, to be payable alike to attorney-advocate or counsel; giving the public the option of selecting their advisers—somewhat on the same principle as that comprised in sect. 6 of the 13 & 14 Vict. c. 61;—Such a scale of pecuniary emoluments should be printed and displayed in some conspicuous part of the Court-house, and be accessible on all occasions. For instance, for causes in which the sums sought to be recovered are laid at 5*l.* and not over 10*l.*, a certain sum should be payable; where at 10*l.* and not over 20*l.*, so much more; where at 20*l.* and not over 50*l.*, a still higher sum, re-

taining the ‘consultation fees’ as they at present exist. A check would thus be held in some degree over the system of bargaining and corruption, which might otherwise ensue.”

And further on he contends, that

“There is no reason why a clause with a prospective aspect which should establish such a fixed scale of fees as that proposed should not during the present session be introduced into the ‘County Courts’ Extension Act;’ nor why another clause should not be framed, which should, to a certain extent *confine the duties of advocate to their proper representatives* under such a new system of emoluments; and it is to be hoped that some similar scheme will not entirely escape the observation of our legal Members of Parliament; the establishment of which would be, moreover, a further check on the cupidity of those who would exclude the barrister from his proper sphere of business, and prevent, to a great extent, the recurrence of similar *agreements* as that before alluded to. If, then, the barrister and attorney were thus placed on a level and fair footing, it is easy to foresee the result in the speedy formation of local ‘Bars’ throughout the country. This would be desirable on more accounts than one, for in addition to the relief it would afford to the over-crowded state of the Superior Courts of the metropolis, by abstracting a numerous band of competitors for the ‘remnants’ which there so ‘scanty bloom;’ it would benefit the country districts generally wherein such a ‘Bar’ would arise. The Courts would be attended regularly by a class of men both well educated and talented, whose professional services would always be at command at a very small expense, and would be able to carry up *to the Superior Courts at Westminster on appeal* without further intervention and consequent expense, any causes on which a legal dispute might arise on technicalities, or a verdict be given contrary to the rules of evidence or the requirements of justice. Or if more convenient, the *appeals* might be heard and argued *before the Judges of Assize* at the option of the suitors, which plan would preclude the necessity and expense of an adjournment of the respective parties to the suit to the metropolis. The towns also, within the districts of the New Courts would be much benefited by the accession of a number of families in the position of life occupied by the members of the Bar; and the country districts would not be in want of active and useful men of business who would act either as magistrates, or in any other legal capacities, and whose constant presence on the spot and thorough knowledge of the law, might go far to suppress that class of lawless depredations which we now have occasionally to lament.”

It is remarkable, however, in another part of the pamphlet,—treating of the objections to the plan of forming partnerships between barristers and attorneys,—that the writer answers his own argument in favour

of the barrister acting in direct communication with the suitor. He says,—

“If once any system were allowed to gain ground by which the juriconsult would be tempted to entice a number of clients to his chambers; we should soon have an established body of men whose business would be to strive each to underbid his brother of the Bar; and in these days when the mania exists *ad absurdum* for having everything as cheap as possible, without reference to quality; the result would be that the greater number of clients would seek the professional assistance of him who would take the smallest fees, without considering how far just or how far practicable his advice might be.

“The system of etiquette at present adopted by counsel, places a check on the introduction of such a course of underbidding, and the medium of a respectable attorney between client and advocate removes far distant the chances of any underhand bargain being made on the probable issue of a trial. The barrister is now openly paid as the physician, to do the best he can for him who pays. His motives are known, and he is scarcely within the pale of corruptibility. He scorns to listen to any suggestions as to the supposed value of his professional assistance, knowing what his proper fees are; he goes, therefore, into Court relying on the merits of his case, to the right development of which all his energies and all his talents are directed. Remove this check on the cupidity of a class of men so numerous as that which is comprised under the general term of ‘the Bar,’ and in all probability many could be found to carry into Court any case which might be trumped up, despite its manifest injustice, or its impossibility of success, provided only they themselves were sufficiently paid. An ancient poet has written,—‘Quid non mortalia pectora cogis Auri sacra fames:’ and, as we all know that the wicked are promiscuously mingled with the good in every class of society, it cannot be expected that the honourable integrity and upright course of conduct, which renders the Bar as a profession both gentlemanlike and praiseworthy, should be equally distributed among *all* its members. What a pernicious example then would be set to the struggling Junior, if he saw those around him preying on the spoils of the just, and enriching themselves by the overthrow of the innocent. It would, indeed, require more than human moral courage to prevent a mind from being contaminated by similar influences, and falling headlong into the same abyss.”

Now, without for a moment supporting the proposition that it is expedient or desirable for members of the several branches of the Profession to be *united in partnership*, we venture very confidently to say that the disadvantages of that project, would be much less than the proposed repeal of the clause in the Small Debts Act, and the abolition of the rule of the Bar, prohibiting

the acceptance of briefs or instructions, except through the medium of attorneys. All the evil consequences which have been pointed out in the preceding extract, and many more, would inevitably arise. Even if the Legislature should be induced, by the prevailing clamour in favour of the County Courts, to repeal the clause in question, we much doubt whether the Benchers of the Inns of Court will allow their wholesome rule to be altered, for it will be recollected that whilst the Court of Queen’s Bench decided, that there was *no law* to prevent a barrister from taking a brief from the suitor, the rule of the Bar which forbids the practice, was wise and beneficial.

If then the rule be continued, will the Benchers, in case of infringement, visit the offender with the punishment of *disbarring*? And if they should not, what will the Judges decide, when a complaint is made against a barrister, that he is acting also as an attorney? Again, if the barrister is allowed to act as an attorney, with what justice can the Superior Courts refuse to hear the attorney named on the record, if his client choose to entrust the case to his advocacy?

We put these questions to show some of the difficulties which may arise, and some of the consequences which may ensue,—but trust that the power and influence of the authorities at the Bar will stop the progress of the injudicious changes which are projected.

MASTERS EXTRAORDINARY IN CHANCERY.

A CORRESPONDENT at Great Yarmouth is informed that his appointment to the office of Master Extraordinary need not, in our opinion, be gazetted to enable him to act, though it is usual to give the notice. In a recent case before the Lord Chancellor, where a solicitor of the Court had acted as a Master Extra., swearing a deponent at Boulogne, and signing a jurat testifying that the oath had been administered at Tonbridge Wells, the fact of any Commission having been issued was disputed, and the solicitor could not produce it. If his appointment had been gazetted, we presume that the production of the Gazette would have assisted the solicitor’s case.

It is understood that, on the abolition of the office of Masters in Chancery, a new arrangement will be made regarding these Commissions to Masters Extra.

LAW OF ATTORNEYS AND SOLICITORS.

EVIDENCE OF DELIVERY OF SIGNED BILL.

AN attorney was employed by the solicitor of a provisionally registered company to do some business for the company. He delivered his bill, headed "Northampton, Lincoln, and Hull Railway to R. H. D., debtor," to the solicitor of the company, at the request of the latter. A copy of it was afterwards produced to the defendant, one of the provisional committee, who said that he had seen that bill before, that some of the charges were high, but that it would not be disputed; and the copy so produced was thereupon taken back.

The cause was tried before Mr. Justice Erle, in Middlesex, after Hilary Term, 1850, and a verdict was found for the plaintiff. A bill of exceptions was tendered to the charge of the Judge, on the ground that the learned Judge ought to have directed the jury to find for the defendant as there was no evidence of the delivery of a sufficient bill to him, and that the bill was not directed on the face of it to the defendant as the party charged. A writ of error was then brought into the Exchequer Chamber.

Mr. Baron Parke, on delivering the judgment of the Court, said—

"The question arises upon the replication to the plea, which states, that there had been no delivery of a bill of the fees and disbursements, in respect of which the action was brought. The replication states, that the plaintiff below did, one month before the commencement of the suit, deliver to the defendant below a bill of charges of the fees and disbursements in the plea mentioned, subscribed with the proper hand of the plaintiff, pursuant to the statute.

"It appears upon the evidence set forth on the bill of exceptions, that a bill had been delivered to Pell, who was the attorney of the company, and who employed the now defendant to do the work, in respect of which the action was brought, as attorney. That bill contained a list of disbursements and fees, and was headed, 'Northampton, Lincoln, and Hull Railway, To Robert Heaford Daubney, debtor.' It was delivered to Pell, who had applied for it, and afterwards a meeting took place, at which the plaintiff and the defendant were present, when a copy of the bill, subscribed in the handwriting of the defendant, was produced; and the plaintiff 'then proved,'—(as the bill of exceptions incorrectly expresses it, meaning that he offered evidence to the jury, and so we must understand it,)—'that one Joseph Heaford Daubney, in the month of December, A.D., 1846, gave the last-mentioned copy of the bill so produced, to the defendant, who

then looked the same over, and said to the said J. H. Daubney, that he, the defendant, had seen that bill before, that some of the charges were high, but that it was not intended to dispute them; and that two other members of the provisional committee of the company came into the room in which J. H. Daubney and the defendants were, shortly after the last-mentioned bill had been so handed to the said defendant,'—it is evident from this that the defendant below had had the bill in his possession, — 'that the last-mentioned bill was then before them: that one of them said to J. H. Daubney, in the presence of the defendant, that it was not intended to dispute the charge of the bill * * * and after some more conversation on the subject, the last-mentioned copy of the bill was taken away by J. H. Daubney,'—that is, it was returned to the defendant."

With respect to the form of the bill, it was contended by Mr. Mellor, that the statement requires that not only a list of items shall be delivered to the client, but that the list shall be properly headed, showing both a creditor and a debtor, and he contended, that in this case the bill did not state the plaintiff was intended to be charged therewith.

"The authority in the Irish Court of Exchequer, *Manning v. Glynn and Sheehan*, 1 Jones, 513, (Irish Reports,) which he cited in support of his argument, is, no doubt, a perfectly correct decision, but in that case the bill had no heading whatever. Here, upon reading the bill, no doubt can be entertained that it was intended that some person should be made liable, because it is headed, not only 'The Northampton, Lincoln, and Hull Railway,' but 'The Northampton, Lincoln, and Hull Railway, to Robert Heaford Daubney, debtor.' We think that it is sufficient for the Court to say that the defendant intended to charge all persons responsible for the construction of the railway."

The remaining question was, whether there was sufficient evidence to go to the jury that the bill was delivered to the plaintiff.

"As to the delivery to Pell, it was contended, that an attorney has no authority to ask for the delivery of a bill for his client, and that the delivery to Pell, therefore, was not a sufficient delivery to satisfy the statute. Some of us entertain a doubt whether a delivery to Pell would have been sufficient; but we think that there was some evidence of a delivery by Pell to the plaintiff, for the latter, upon being shown a copy of the bill, says, that he 'had seen that bill before, that some of the charges were high, but that it was not intended to dispute them.' Some of us, however, think there was sufficient evidence that Pell was authorised by the plaintiff to receive the bill for him. In that view, the case comes within the authority of *Vincent v. Staymaker*, 12 East. 372, where

the Judges (*dissentiente* Lord Ellenborough) were of opinion that a delivery to the attorney was a sufficient delivery to the client himself."

The learned Baron then concluded as follows:—

"I feel some doubt whether, if the case had turned on the delivery to Pell alone, there would have been a sufficient delivery to the plaintiff under the statute; but we all agree that there was evidence to be submitted to the jury of a delivery of the bill to the plaintiff himself. To satisfy the statute, a mere showing of the bill to the party is not sufficient; and in this case the jury might, upon the evidence stated in the bill of exceptions, conclude that the defendant went to the plaintiff with the intention of merely showing him his bill, and then taking it back, in which case there would not have been a sufficient delivery to the parties sought to be charged therewith; or they might infer that he said to the plaintiff, 'Here is my bill, take it, and keep it if you like.' According to the one or other view, that second transaction would or would not satisfy the statute. The question was one altogether for the jury: if the plaintiff might have kept the bill, there was a sufficient delivery; otherwise, there was not. The learned Judge, therefore, was right in leaving the evidence to the jury. The judgment of the Court below will therefore be affirmed." *Phipps v. Daubney*, 2 L. M. & P. 180.

METROPOLITAN AND PROVINCIAL LAW ASSOCIATION.

ANNUAL REPORT.

[Continued from page 66.]

"General Proceedings.—The Association has now completed its fifth year, and it is again the duty of the Managing Committee to render to the members an account of the proceedings they have adopted in the various branches of the duties incident to their office; and, as their labours have been almost entirely a continuation of those commenced in preceding years, they will endeavour to make their report more brief than those which have, on former occasions, been necessary for an explanation of the nature and principles of the operations of the Association.

"The ordinary proceedings of the Committee come so little before the public, that it has always been a matter of some difficulty, although undoubtedly one of much importance, to keep prominently before the attention of the members, scattered as they are throughout the country, the operations of the Association to which they belonged.

"Minutes of Committee.—By the established practice of the Association, a copy of the minutes of every meeting of the Committee is sent to every provincial member of the Committee, and this, so far as regards the subscribers in all the 22 towns where there are members of the Committee, affords the means of giving full information upon every important

professional subject. The Committee believe that the minutes which are thus circulated are, in some instances, turned to advantage—not however, by any means so generally as to keep the members, even in those towns, adequately acquainted with the current operations of the Committee, while all those who live in the smaller country towns are obviously entirely unassisted by the arrangement. For the important object, moreover, of obtaining increased power to the Society by means of fresh subscribers, this circulation of the minutes, if not wholly inoperative, is yet clearly insufficient.

"Professional Periodical.—The idea of establishing some professional periodical, to be especially the organ of the Association, has frequently been brought before the Committee, and as often laid aside from the insuperable objection, that its realisation would require much greater pecuniary resources than have ever been within the control of the Committee. Soon after the last general meeting, the Committee endeavoured, in some measure, to supply this want, by drawing up short abstracts of their operations, and forwarding them to the "Legal Observer" and the "Law Times," the editors of both of which papers obligingly gave insertion to these communications. This course was, however, felt by the Committee to be liable to a two-fold objection; first, because the expediency of publishing the minutes of the Committee is doubtful, especially with regard to such questions as are left undetermined at the close of the meeting; secondly, because such a publication did not reach any of the members who were not subscribers to one or other of the papers in question. The Committee have, therefore, resolved to try the experiment, of issuing, from time to time, as occasion may require, during the year, circulars to all the members, reporting the proceedings of the Committee, and calling the attention of the members to any points of special interest to them, or upon which their immediate active co-operation may be of importance to further the objects of the Association. The Committee will also gladly avail themselves of the opportunity which these circulars will offer, of communicating to the members any new Rules of Court, or other matters of practical importance to them in the daily routine of their practice.

"The first circular was issued to the members on the opening of the present Session of Parliament. It has appeared to give a good deal of satisfaction, and the Committee will readily attend to any suggestions from the members, in their endeavours to render succeeding numbers interesting and valuable. Upon this subject they will only further remind the members that one great object of these circulars will be lost, and the possibility of their continuance rendered doubtful, unless they are made use of by the present members, as a means of inducing their professional friends, also, to join the Association.

"Malpractice.—In their report last year the Committee stated, that a case in which very gross malpractice had been alleged against one

of the members, was then under consideration. The Committee regret to say, that the accused party was unable to refute the charges, and, although he attempted a defence, yet it was one which, in fact, admitted the main points of the accusation. The Committee, therefore, felt compelled to put in force the power entrusted to them by the sixth rule, and to expel the member in question from the Association. Against this judgment the member has not exercised his right of appeal.

"Some other cases of alleged misconduct which were brought before them, but which did not affect members of the Association, they have dealt with as circumstances seemed to require.

"*Prosecutions by Magistrates' Clerks.*—Most of the members are no doubt aware that there is a difference, for which there does not appear to exist any substantial reason between the privileges of the clerks to magistrates in boroughs and those in counties, inasmuch, as while the latter are generally employed somewhat extensively in conducting prosecutions, the former are, by the 162nd section of the Municipal Reform Act, expressly prohibited from being concerned in prosecutions. On the occasion of the passing of the Act for Providing for the Expenses of Prosecutions last Session, the Association of Clerks to Magistrates endeavoured to get this prohibitive clause repealed, and the Committee was requested to assist that endeavour. After carefully considering the question, however, they felt compelled to decline moving in the matter on two grounds—first, that it was a question of privilege, not between the Profession, as a whole, and any other body attempting to effect an encroachment, but between one class of the Profession and another, and that the effect of the repeal would, practically, be to give to the magistrates' clerks, from the advantages incident to their position, almost a monopoly of that branch of criminal business—a result which, whether in itself desirable or not, the Committee felt was certainly not within their province to promote. But, secondly, the Committee, upon the merits of the question, would be more inclined to advocate the extension of the prohibition to the clerks of county magistrates than its repeal with regard to those of boroughs; for it is, in their opinion, so important to keep the office of prosecutor entirely separate from that of Judge, that they think it wise to provide that an officer, who, like the clerk to the magistrates, frequently exercises a deciding influence upon the question of whether an accused party shall be committed, shall not be open to the possibility of having any pecuniary interest connected with the prosecution.

"*Annual Certificate Duty.*—The Committee have continued to co-operate with the Council of the Incorporated Society in measures for procuring the repeal of the Annual Certificate Duty, and although they cannot yet congratulate the Profession upon the final attainment of this object, yet the position of the question has continued to improve, and, slow as the process appears, the Committee feel confident that it is sure.

"In their report last year the Committee remarked that the state of political parties in the House, and the Ministerial Crisis which took place in February, 1851, had retarded the progress of the question. Exactly similar causes have been in operation this year, and Lord Robert Grosvenor has not yet thought it prudent to renew his notice of motion as an independent member, seeing that the new Government includes so many gentlemen, headed by the Chancellor of the Exchequer, who cordially supported him last year, that the Profession has just grounds for expecting that the Government will remit the tax. In this hope, several of the members of the Council of the Incorporated Society, accompanied by some members of the House of Commons who have supported the motion, have lately waited upon the Chancellor of the Exchequer, and he has promised to give the whole subject his careful and earnest consideration, bearing in mind the several decisions of Parliament already expressed upon the injustice of the tax, and the injurious effect of recent alterations in the law on professional emoluments, and with the desire to come to a right conclusion on the merits of the case. Lord Robert Grosvenor will introduce the Bill after the Easter recess; and it is, therefore, important that no time should be lost in sending up petitions to the House, and letters to individual members, calling upon them to support the repeal. In the meantime, it is satisfactory to record, that on the one division which took place last year, the late Government was again beaten by a majority of 162 against 132, being the largest majority, in the largest House, that has yet divided upon the question. In the previous year, the largest division took place upon the motion for leave to bring in the Bill, when 155 members supported the motion, and 136 voted with Government against it. In that year the final vote by which the Bill was lost, gave the Government, after the strongest exertions on their part, a majority of only 24 in a House of 200 members.

"*Denoting Stamps on Leases.*—The Committee have had pressed upon their attention, the very serious inconvenience resulting from the clause in the new Stamp Act, requiring a denoting stamp to be affixed to all counterpart leases, after both lease and counterpart have been executed. They are able to state, that the great inconvenience of this provision, necessitating as it does the transmission to London of all leases and counterparts, from all parts of the country, after execution, was urged upon the late Chancellor of the Exchequer, while the Bill was yet before Parliament; and they, therefore, felt that it would be useless to apply to him upon the subject. The Committee, however, will, on the earliest opportunity, take steps to get the evil remedied; and they will also take care that due notice of any such opportunity shall be given to their friends throughout the country.

"*Common Law Masters.*—In their last report, the Committee referred to the interviews they

had arranged with the Common Law Masters, upon the subject of increasing the time of their attendance at their offices, an accommodation to which the Committee believe the Profession was legally entitled, and which, from the increased facilities of communication by railway and telegraph, and still more from the afternoon deliveries of country letters, had become a matter of considerable practical importance.

Shortly after the general meeting, those interviews took place, and the Committee are glad to say, that their representations were met in the friendly spirit that was anticipated, and that additional accommodation has since been afforded."

[The remainder of the Report shall be given in an early Number.]

RECENT DECISIONS IN THE SUPERIOR COURTS, AND SHORT NOTES OF CASES.

Lord Chancellor.

In re Wheeler. March 20; May 26, 1852.

LUNATIC MORTGAGEE.—PETITION BY COMMITTEE AND MORTGAGOR FOR VESTING ORDER.—COSTS.

Held, *disapproving of the decision of Lord Eldon in Ex parte Richards*, 1 Jac. & W. 264, that the estate of a lunatic mortgagee will not be directed in future to discharge the costs of the petition on behalf of a mortgagor for leave to pay the money into Court and for a vesting order under the 1 W. 4, c. 60, unless the committee had previously refused to present such petition.

The costs, however, of a petition by the committee and mortgagor were, under the circumstances, directed to be paid out of the lunatic's estate.

THIS was a petition under the 1 W. 4, c. 60, on behalf of the committee of the estate of this lunatic and of a mortgagor of leasehold premises, praying for leave to pay the amount of the mortgage debt into Court, and for an order vesting the property in such mortgagor, and for a redelivery of the title-deeds.

T. Edwards and Giffard in support, referred, on the question of the payment of the costs of the petition and proceedings consequent thereon out of the lunatic's estate, to *Ex parte Richards*, 1 Jac. & W. 264; *Ex parte Marrow*, Cr. & Ph. 142; *In re Townsend*, 2 Phill. 349; *In re Lewes*, 1 M'N. & G. 23; *In re Townsend*, ib. 686; *Ex parte Clay*, in re Towers, Shelford's Lunacy, 393.

Pitman for the mortgagor.

Cur. ad. vult.

The Lord Chancellor said, the question was whether the lunatic's estate ought to pay the costs of the petition. It appeared that the committee and the mortgagor had joined in the petition, and the decision of Lord Eldon in *Ex parte Richards* must be followed, and the lunatic's estate bear the expense, and moreover, as in all the cases in the office the costs were so borne, although it was quite contrary to principle and to the settled rule that a mortgagor dealing with the estate in settlement was to have his costs paid by the mortgagee. In future, however, as the petition ought not to have been presented by the mortgagor unless the committee had refused, no costs would be given if the mortgagor presented a petition under those circumstances.

June 2.—*In re Thorp*—Stand over.

— 2.—*In re Cumming*—Day enlarged within which traverse of inquisition to be tried.

— 2.—*In re Birch*—Stand over.

Lords Justices.

Money v. Jordan. April 26, 27, 28, 29; May 29, 1852.

INJUNCTION.—RESTRAINING PROCEEDINGS ON BOND AND WARRANT OF ATTORNEY.—CONTRACT NOT TO ENFORCE PAYMENT.

The defendant had agreed not to enforce the payment of a debt secured by a bond and warrant of attorney given by the plaintiff, but she had refused to cancel the securities. The plaintiff's father had, however, in consequence of such promise, not carried out his intention of resettling certain property, which he had previously settled on her for a nominal consideration, upon the marriage of his son, who had likewise, as it appeared, obtained a settlement of certain property his intended wife was entitled to on the faith of a similar representation, and had entered into the marriage: Held, (per Lord Justice Knight Bruce, dissentiente Lord Justice Cranworth,) that the plaintiff was entitled to enforce the contract in equity, and an appeal from the Master of the Rolls was therefore dismissed, without costs, granting a perpetual injunction to restrain the proceedings at law which had been instituted to enforce the payment of the debt.

THIS was an appeal from the Master of the Rolls granting, on Feb. 9 last, a perpetual injunction to restrain proceedings at law upon a warrant of attorney dated in Feb. 1842, and given by the plaintiff, and on which judgment had been entered up on 23rd Feb., in the same year. It appeared that the warrant of attorney, together with a bond, had been given to a Mr. Charles B. Marnell to secure the repayment of a sum of 1,200*l.* which he had advanced to conduct a speculation in Spanish stock; and that upon Mr. Marnell's death, in Jan., 1843, his sister, one of the defendants, became entitled thereto under his will. It also appeared that the plaintiff's father, who was succeeded by a brother of Miss Marnell as pauper counsel at Calcutta, had in the year 1833 conveyed certain property at Midnapore to her for a nominal consideration, and that he had expressed his intention of re-settling it on his son's marriage, but had not done so, upon her promising not to en-

force the bond or warrant of attorney, and she had also made a statement to the plaintiff's mother in Aug., 1845, to the same effect upon the contemplated marriage of the plaintiff, and on the faith of which a settlement of certain property his intended wife was entitled to had been made. The defendant married Mr. Jordan in 1848, and about two years afterwards the proceedings now sought to be restrained were instituted to enforce the warrant of attorney and bond against the plaintiff under which he was arrested.

R. Palmer and Bates, for the plaintiff, cited *Pasley v. Freeman*, 3 T. R. 51; *Gale v. Lindo*, 1 Vern. 475; *Montefiori v. Montefiori*, 1 Wm. Blackst. 363, cited in *Neville v. Wilkinson*, 1 Bro. C. C. 543.

Willcock and F. T. White, for the defendants, referred to *Maunsell v. White*, 1 Jones & Lat. 539; *Pearson v. Morgan*, 2 Bro. C. C. 388; *Wilmot v. Woodhouse*, 4 Bro. C. C. 226.

Cur. ad. vult.

Lord Justice Knight Bruce, after stating the pleadings and evidence and referring to the facts of the case, said, that as the plaintiff had entered into the contract of marriage upon the representations of the defendant, while single, that the debt would not be enforced, and that his father had also abstained from resettling the Midnapore property upon a similar agreement, the plaintiff was entitled to the relief he asked and the defendant's contract was enforceable in equity, and the appeal must be dismissed.

Lord Justice Cranworth said, that although the defendant's promise had undoubtedly influenced the plaintiff's father on the occasion of his son's marriage, yet as she had expressly refused to cancel the securities, she had not abandoned her legal right to enforce the debt, and there was therefore no misrepresentation which brought the case within the decisions cited, and this Court would not enforce the contract. As, however, the Judges of this Court differed in opinion, the decree of the Master of the Rolls would stand.

June 2.—*Attorney-General v. Harrow School*—Part heard.

— 2.—*Whitworth v. Brogden*—*Cur. ad. vult.*
— 2.—*Phipps v. Stone*—Arrangement come to.

— 2.—*Southby v. Great Western Railway Company*—Stand over.

— 2, 3.—*Walker v. Tipping*—*Cur. ad. vult.*

— 4.—*In re Hart*—Order for taxation of costs.

— 5.—*Moorhouse v. Colvin*—Ex parte application refused for leave to the personal representative to appear at hearing of appeal.

— 7.—*In re Gedye*—Appeal from the Master of the Rolls dismissed, with costs.

— 3, 7, 8.—*Clowes v. Beck*—Appeal allowed from the Master of the Rolls, and as to costs *cur. ad. vult.*

— 4, 5, 8.—*Ex parte Rufford and another, in re Rufford*—Part heard.

Master of the Rolls.

Dawson v. Bourne. June 5, 1852.

WILL.—CONSTRUCTION.—REQUEST FOR LIFE OR ABSOLUTELY IF NO CHILDREN.

A testatrix, by her will, gave her residuary estate to her two nieces equally, and then confirmed the legacies thereinbefore mentioned to be given to her said nieces and their children without comprehending their husbands, unless her nieces, or either of them, should die without issue: Held, that they took equally for their separate use for life, and their children after their death, and absolutely if no children.

THE testatrix, by her will, gave all the rest, residue, and remainder of her property, of what nature or kind soever, to be equally divided between her nieces, Jane and Mary Dawson, and then proceeded as follows:—“And I confirm my said legacies hereinbefore mentioned to be given to my nieces, Jane Dawson and Mary Dawson, and their children, without comprehending their husbands, unless they, my last-mentioned nieces, or either of them, should die without issue.”

C. Purton Cooper and Nichols, for the nieces, contended they took absolutely, referring to *Wylde's case*, 6 Rep. 16; *Stokes v. Heron*, 12 Cl. & F. 161; 2 Dru. & War. 89; 4 Ir. Eq. Rep. 284.

The Master of the Rolls (without calling on *Southgate*, contra,) said, that the nieces were entitled equally for their separate use for life and their children after their death, and if no children, then absolutely.

June 2.—*Clegg v. Fishwick; Same v. Massey*—Decree herein, with costs.

— 3.—*Forden v. Baine*—Order for discharge of defendant on putting in accounts as executor.

— 3.—*Wheeler v. Kebbell*—Injunction granted.

— 4.—*Johnson v. Thomas*—Judgment on fur. dirs. and costs.

— 4.—*Bates v. Hilcoat*—Order for foreclosure of equitable mortgage.

— 5.—*Locket v. Jaques*—Injunction granted *ad interim*.

— 7, 8.—*Crouch v. Hooper*—Part heard.

Vice-Chancellor Turner.

June 3.—*Goodchap v. Weaving and others*—Order for production of documents.

— 4.—*Bullin v. Griffin*—Stand over with leave to bring action.

— 5.—*Cambray v. Draper*—Executors held entitled to their costs.

— 5.—*Johnstone v. Shaw*—Judgment on exceptions to Master's report.

— 7.—*Lankester v. Eastern Union Railway Company*—Demurrer overruled.

— 7.—*Rollins v. Groom*—Order for payment of arrears of annuity.

— 8.—*Padwicke v. Stanley*—Demurrer allowed with leave to amend.

June 8.—*Allen v. Thames Haven Company*—Decree for specific performance of contract.

Vice-Chancellor Kindersley.

In re Staffordshire and Shropshire Railway Company, ex parte Archibald. May 8, 1852.

WINDING-UP ACT.—ORDER ON TRUSTEE FOR PAYMENT OVER OF MONEY TO OFFICIAL MANAGER.

Held, reversing the decision of the Master, that the 11 & 12 Vict. c. 45, s. 66, did not apply where a trustee admitted he had had moneys in his hands belonging to the company, but had handed it over to his co-trustee.

THIS was a motion to discharge the order of the Master on the winding up of the above company, directing the appellant, Mr. Archibald, to pay over to the official manager a sum of money which he admitted he had in his possession in the year 1846, as trustee for the company, but which it appeared he had handed over to his co-trustee.

W. T. S. Daniel, in support of the appeal, referred to the 11 & 12 Vict. c. 45, s. 66, which enacts, that "after the appointment of the official manager of the company the Master shall from time to time, by order to be made upon the application of the official manager or of any contributory, order and require any contributory, trustee, receiver, banker, or agent to pay, deliver, or transfer forthwith, or within such time as the Master shall direct, into the hands of the official manager, any sum or balance, books, papers, estate, or effects which shall happen to be in his hands for the time being, and to which the company is *prima facie* entitled."

Roxburgh, for the official manager, *contra*.

The Vice-Chancellor said, that the provision in the act only applied where there was a distinct admission that the party still held a fund to which the company was *prima facie* entitled, and the appeal was therefore allowed.

June 3, 4.—*In re Wolverhampton, Chester, and Birkenhead Railway Company, ex parte Stocks*—Name to be removed from list of contributories.

—4.—*Wells v. Eyles*—Order for payment of moneys out of Court.

—7, 8.—*Harvey v. Stracey*—*Cur. ad. vult.*

Vice-Chancellor Parker.

Martin v. Pycroft. May 26, 1852.

CLAIM.—SPECIFIC PERFORMANCE OF AGREEMENT FOR LEASE.—STATUTE OF FRAUDS.

An agreement was entered into by the plaintiff for the renewal of a lease of a public-house for 21 years, at a yearly rent of 70*l.*, payable quarterly, and under and subject to such and the same "covenants, clauses, conditions, and agreements" as were contained in the lease under which the plaintiff at present held the premises. It appeared that

the plaintiff had paid a premium on the former lease being granted: Held, dismissing without costs a claim for the specific performance of the agreement, that the omission of a statement of the payment of a premium was material, and that the contract was void under the Statute of Frauds.

THIS was a claim to enforce the specific performance of an agreement, dated in August, 1849, for the lease of a public-house in Chester Rents, Chancery Lane, and entered into by the plaintiff, the lessee and occupier, with the defendants, who were the lessors, for the renewal of the lease for 21 years from Michaelmas next, at a yearly rent of 70*l.*, payable quarterly, and under and subject to such and the same "covenants, clauses, conditions, and agreements" as were contained in the lease under which the plaintiff at present held the premises. It appeared that the plaintiff held the premises as under-lessee to Messrs. Calvert, to whom the defendants had granted the lease, and that he had paid Messrs. Calvert a premium of 200*l.*, and covenanted to expend 200*l.* in repairs, &c., within 12 months from the commencement of his tenancy, besides the annual rent of 70*l.*

W. T. S. Daniel and *Dawney* in support of the claim; *Malins* and *Ellis*, *contra*, on the ground the agreement was void under the Statute of Frauds, as not expressing that a premium was to be paid, which was clearly payable according to the intention of the parties.

The Vice-Chancellor said, that the payment of a premium was not included in the reference to the "covenants, clauses, conditions, and agreements" contained in the existing lease, but the agreement appeared to be one for a lease without a premium, and as therefore a material part had been omitted, it could not be enforced consistently with the Statute of Frauds. The claim was dismissed, but without costs.

June 3.—*Crowther v. Rhodes*—Injunction refused.

—3, 4.—*Earl of Devon and another v. Shropshire Union Railway and Canal Company*—Injunction granted.

—8.—*Kirwan v. Daniel*—Bill dismissed, without costs.

Court of Queen's Bench.

Walker and another v. British Guarantee Association. April 20, 1852.

ACTION ON BOND.—AVERMENT IN DECLARATION.—BAILEE.—LOSS BY VIOLENCE AND WITHOUT DEFAULT.

The declaration on a bond, conditioned for the due payment to the trustees of a building society, of moneys by their treasurer, alleged that the treasurer had received in that capacity a sum of money, which, according to the rules of the society and the direction of the trustees, he was bound to have paid over to the credit of the trustees, and that he had not done so, whereby the

said moneys were entirely lost to the society: Held, that according to this averment the treasurer was bailee, and that therefore a plea thereto that the money, without any default on the part of the treasurer, had been violently robbed and stolen from his person, whereby he was prevented from paying the same over to the bankers of the society, was a good answer to the action.

THIS was an action on a bond, conditioned that the treasurer of the building society, of which the plaintiffs were trustees, should account to them for all moneys which should come into his hands, to recover a sum of 170*l.* which had not been paid over. The defendants pleaded that the treasurer had received the sum in question, but that without any default on his part the same was violently robbed and stolen from his person, whereby he was prevented from paying the same over to the bankers of the society. The declaration alleged, that the treasurer had received into his hands the sum in question, which, according to the rules of the society and the direction of the trustees, he was bound to have paid over to the credit of the trustees, that he had not done so, whereby the money was entirely lost to the society. The verdict having passed for the defendants.

Knowles, Q. C., moved for a rule nisi to enter judgment for the plaintiffs, *non obstante veredicto*.

The Court, after taking time to consider, said, that according to the declaration the treasurer was bailee of the money. The plea alleged a loss by violence, in which case a bailee would be discharged, if guilty of no default, and therefore his sureties would also be discharged. The rule was accordingly refused.

June 2.—*Howe v. Barber*—Rule for review of taxation discharged with costs.

— 2.—*Regina v. York and North Midland Railway Company*—*Cur. ad. vult.*

— 3.—*Regina v. Trustees of Birkenhead Dock Company*—Judgment for respondents without costs.

— 3.—*Regina (ex parte Stevens and others) v. Vicar and Churchwardens of Hammersmith*—Rule nisi for mandamus on defendants to convene meeting of vestry.

— 3.—*Ex parte Ashton*—Rule nisi for certiorari to bring up conviction of publican.

— 3.—*Regina v. Vicar, &c., of Hillingdon*—Rule discharged with costs for mandamus on defendants to elect surveyor of highways.

— 3.—*Regina v. Commissioners of Insolvent Debtors' Court*—*Cur. ad. vult.*

— 3.—*Timmins and wife v. Gibbons*—Rule to enter verdict for plaintiff discharged.

— 3.—*Regina v. Great Western Railway Company*—Rule nisi for mandamus on defendants to complete railway.

— 4.—*Regina (ex parte Poor Law Board) v. Vestry of St. Pancras*—Rule nisi for mandamus on defendants to restore master of workhouse.

— 4.—*Wilkinson v. Anglo-Californian Gold*

Mining Company—On demurrer to plea, judgment for defendants.

June 5.—*Regina (ex parte Napier) v. East India Company*—Rule for mandamus refused.

— 5.—*Regina (ex parte Commissioners of Goodman's Fields) v. East London Waterworks Company*—Judgment for the Crown.

— 5.—*In re —, gent., one, &c.*—Rule nisi on attorney to pay over moneys, and answer matters of affidavit.

— 7.—*Regina v. Registrar of Friendly Societies*—Rule discharged for mandamus on defendant to certify amended rule of society.

— 7.—*Regina (ex parte Rose, clerk) v. Bishop of Oxford*—Rule for prohibition refused on defendant against carrying into effect sentence of suspension.

— 7.—*Regina v. Sill*—Rule absolute for certiorari to remove indictment against attorney into this Court.

— 8.—*Kernot v. Pittis*—*Cur. ad. vult.*

Queen's Bench Practice Court.

(Coram Mr. Justice Wightman.)

Regina v. Justices of Surrey. May 8; June 2, 1852.

INDICTMENT FOR NON-REPAIR OF ROAD.—ORDER OF JUSTICES FOR.—COSTS.

Upon the surveyor of a parish being summoned under s. 94 of the 5 & 6 W. 4, c. 50, before justices, he denied the liability of the parish to repair, but he did not state or suggest who was bound to repair, and the justices thereupon directed an indictment under s. 95. It appeared, however, that one of the directing justices was interested in the matter as the landlord of the occupier of a farm liable to repair *ratione tenuræ*: Held, that, as the prosecution was *bonâ fide*, and the justices could not have done otherwise than direct the prosecution, the prosecutor was entitled to a mandamus on the justices for the allowance of the costs of such prosecution.

THIS was a rule nisi which had been obtained on April 27 last, for a mandamus on the defendants to allow the costs of prosecuting an indictment against the inhabitants of the parish of Abinger, for the non-repair of a highway, under the 5 & 6 Wm. 4, c. 50, ss. 94, 95. It appeared that an order had been made for the prosecution of the indictment, but that one of the three justices making such order was interested as landlord of the occupier of a farm bound to repair the road in question *ratione tenuræ*. A verdict had been returned for the parish, finding the occupier was so liable, and this rule had thereupon been obtained upon the refusal of the defendants to direct the payment of the prosecutor's costs.

By s. 94, it is enacted, that "if any highway is out of repair or is not well and sufficiently repaired and amended, and information thereof, on the oath of one credible witness, is given to any justice of the peace, it shall and may be

lawful for such justice and he is hereby authorised and required to issue a summons requiring the surveyor of the parish, or other person or body politic or corporate chargeable with such repairs, to appear before the justices at some special sessions for the highways in the said summons mentioned, to be held within the division in which the said highway may be situate."

And by s. 95, that "if on the hearing of any such summons respecting the repair of any highway, the duty or obligation of such repairs is denied by the surveyor on behalf of the inhabitants of the parish, or by any other person charged therewith, it shall then be lawful for such justices and they are hereby required to direct a bill of indictment to be preferred," "against the inhabitants of the parish or the party to be named in such order for suffering and permitting the said highway to be out of repair; and the costs of such prosecution shall be directed by the Judge of Assize before whom the said indictment is tried, or by the Justices at such Quarter Sessions, to be paid out of the rate made and levied in pursuance of this Act, in the parish in which such highway shall be situate."

Pashley showed cause against the rule, which was supported by *Pitt Taylor*, and *Sumner*.

The Court said, the question was whether the justice had such an interest at the time the order was made, as would disqualify him from acting, or if he had such an interest, it was such as could have influenced the other justices. It appeared the prosecution was *bona fide*, and that the parish surveyor, upon being summoned, had not stated or suggested who was bound to repair the road, when he denied the liability of the parish, and the justices could not, therefore, have done otherwise than direct the prosecution. The rule would accordingly be made absolute.

June 7.—*Regina (ex parte Storey) v. Bishop of London*—Rule for prohibition refused.

—7.—*Regina (ex parte Smith) v. Judge of London Sheriffs' Court*—Rule nisi for mandamus on defendant to hear and adjudicate interpleader claim.

—8.—*In re —, gent., one, &c., ex parte Firman*—Rule nisi on attorney for delivery up of deeds, &c., and payment of money.

—8.—*Regina v. Justices of the Town of Barnet*—Rule nisi on defendants to order payment of rate made under 3 & 4 W. 4, c. 90.

—8.—*Ex parte Dunn*—Rule refused to discharge order for striking special jury.

—8.—*Hodge v. Commerall*—Rule nisi for commission to examine witness at Nice.

Court of Common Pleas.

Randall v. Moore. April 24, 1852.

ACTIONS ON BILL OF EXCHANGE.—PAYMENT OF COSTS OF SECOND ACTION UNDER ORDER TO STAY FIRST ACTION.

Actions were brought by the indorsee of a bill

of exchange against the drawer and against the acceptor. The drawer obtained an order to stay on payment of debt and costs, but the costs of the second action were not paid. A rule was refused to enter the verdict for the defendant in the other action which was continued, or to reduce the damages.

THIS was an action on a bill of exchange by the indorsee against the acceptor, and which had been accepted for the drawer's accommodation. An action had at the same time been brought against the drawer, who obtained an order to stay on payment of the debt and costs. It appeared, however, that the costs of the present action were not paid. The defendant pleaded in bar that the drawer had paid the plaintiff the amount of the bill in full satisfaction and discharge of the causes of action. And on the plaintiff having obtained a verdict, *Macnamara* moved for a rule nisi to enter the verdict for the defendant, or to reduce the damages.

The Court said, that the settlement of the first action under the Judge's order was not a payment in satisfaction of the cause of action, inasmuch as the costs of the second action had not been paid, and the rule was therefore refused.

June 2.—*Soloman v. Howard*—Rule refused for postponement of trial.

—2.—*Stiles v. Buswell*—Rule nisi for prohibition to County Court Judge.

—2.—*Gregory v. Duke of Brunswick*—Rule absolute for amendment of record, costs to be paid by defendant.

—3.—*Edwards and another v. Great Western Railway Company*—Rule nisi for review of taxation of costs.

—5.—*Le Roux v. Brown*—Rule nisi to enter verdict for defendant, or a nonsuit.

—8.—*Dalton v. Midland Counties' Railway Company*—Rule nisi to stay proceedings and for interpleader issue.

—8.—*Shoubridge v. Clark*—Part heard.

Court of Exchequer.

England v. Arrowsmith. May 4, 1852.

NOT PROCEEDING TO TRIAL IN PURSUANCE TO NOTICE.—ACTION ON POLICY.—STAMP.

The plaintiff brought an action on a policy effected with a cattle insurance company which was not stamped and the Stamp Office refused to stamp it without a penalty. Held, not to be a sufficient excuse for not proceeding to trial before the sheriff pursuant to notice; but a rule to enter judgment as in case of nonsuit was discharged on the usual terms upon a peremptory undertaking to try.

Hodgson showed cause against this rule which had been obtained to enter judgment as

in case of nonsuit for not proceeding to trial before the sheriff pursuant to notice in this action which was to recover the amount of a policy of insurance effected by the plaintiff with the Farmers' and Graziers' Cattle Insurance Company. It appeared that, in accordance with the recent decision of this Court in *Attorney-General v. Cleobury*, 4 Exch. R. 65, it was necessary that similar policies should be stamped under the 55 Geo. 3, c. 184, and that the Stamp Office refused to stamp it without payment of the penalty.

Atkinson, in support, was not called on.

The Court said, that it was the duty of the plaintiff, who had sued on the policy without a stamp either to have declined to accept it or to have had it stamped, and that there was no sufficient excuse for not proceeding to trial or countermanding the notice of trial. The rule was, however, discharged on the usual terms upon a peremptory undertaking to proceed to trial.

June 2.—*De Rothschild v. Royal Mail Steam Packet Company*—Rule absolute to enter verdict for plaintiff.

— 3.—*Freegarn v. Barnes and another*—Rule absolute for new trial.

— 4.—*Phillips v. Pound*—Rule nisi for discharge of defendant on the ground of privilege.

— 4.—*Foquett v. Moore*—Rule absolute to enter verdict for plaintiff.

— 5.—*Fuller v. Earle*—Application to vary Judge's order attaching shares under 1 & 2 Vict. c. 110, s. 14, refused.

— 5.—*Mitcheson v. Nicholl*—Rule discharged for new trial.

— 5, 7.—*Black v. Gompertz*—Rule discharged.

— 7.—*Benham v. United Guarantee and Life Assurance Company*—On demurrer to plea, judgment for plaintiff.

— 7.—*Phillips v. Pound*—Rule discharged to discharge defendant out of custody.

Eschequer Chamber.

Regina v. Vincent and another. April 24, 1852.

INDICTMENT FOR STEALING AND RECEIVING.—OWNERSHIP OF GOODS.—AMENDMENT OF VARIANCE.

In an indictment for stealing and receiving sugar, it had been described as the property of the master of one of the prisoners,

whereas at the trial it appeared that the sugar in question had been delivered in mistake by the clerk to a dock company for that specified in the delivery tickets: Held, that an amendment describing the sugar as the property of the dock company, had been properly made under the 14 & 15 Vict. c. 100, s. 1, and that the company had a sufficient property in the sugar, and the conviction was affirmed.

THIS was an indictment for stealing and receiving sugar, and on the trial at the February Middlesex Sessions, it appeared that the prisoner, William Vincent, had been sent by his master to the London Docks for two hogsheads of sugar specified in two delivery tickets, and that he met the other prisoner, William West, and gave him 45 pounds of the sugar. The sugar was described in the indictment as the property of Vincent's master, but upon its appearing that the Dock clerk had delivered by mistake two wrong hogsheads, leave was given to amend under the 14 & 15 Vict. c. 100, s. 1, by describing the sugar as the property of the London Dock Company. The prisoners were found guilty, subject to a question reserved, whether the amendment had been rightly allowed to be made, and whether the property in the sugar had been properly laid in the Dock company.

By sect. 1 of the statute it is enacted, that "whenever on the trial of any indictment for any felony or misdemeanour there shall appear to be any variance between the statement in such indictment and the evidence offered in proof thereof," "in the name or description of any person or persons, or body politic or corporate, therein stated or alleged to be the owner or owners of any property, real or personal, which shall form the subject of any offence charged therein," "it shall and may be lawful for the Court before which the trial shall be had, if it shall consider such variance not material to the merits of the case, and that the defendant cannot be prejudiced thereby in his defence on such merits, to order such indictment to be amended, according to the proof."

Metcalfe for Vincent; *O'Brien* for West, against the conviction; *Parry* in support, was not called on.

The Court said, that the amendment had been properly made, and that the London Dock Company had a sufficient property in the sugar, and the conviction was accordingly confirmed.

ANALYTICAL DIGEST OF CASES, REPORTED IN ALL THE COURTS.

Courts of Equity.

[For the previous Sections of the Digest in this Volume, see

Privy Council: Appeals, p. 17.

House of Lords: Appeals, p. 38.

Courts of Equity:

Construction of Statutes, p. 104.]

LAW of ATTORNEYS and SOLICITORS.

ACCOUNTS.

Duty to keep clear and distinct accounts.—It is the duty of a solicitor to keep clear and distinct accounts. *In re Clark*, 13 Beav. 173.

AGENT.

Solicitor and client.—*Damages*.—*Summary*

jurisdiction.—*A.* purchased an estate from *B.*, and on the completion, one solicitor acted for both parties, and the purchase-money was paid into his hands. Afterwards, the purchaser was defeated by *C.*, who had a paramount mortgage. The purchaser presented a petition against the solicitor, asking payment by the solicitor out of the purchase-money of the losses occasioned, or that he might indemnify the petitioner. The petition was dismissed with costs, the Court holding, first, that it had no jurisdiction to award compensation or damages in such a case, and, secondly, that the money having come to the hands of the solicitor as agent of the vendor, and not of the petitioner, it could not interfere.

As to the summary jurisdiction of the Court over solicitors, where moneys are paid to them by clients in that character. *Tylee v. Webb*, in *re Hinton*, 14 Beav. 14.

ASSIGNEE.

Solicitor to fiat.—*Costs out of pocket.*—*Charge for clerk's time.*—An assignee, who had acted as solicitor to the fiat, was allowed to charge for his clerk's time employed in the business of the bankruptcy, as costs out of pocket, but not any profit thereupon. *Ex parte Newton*, in *re Newton*, 3 De G. & S. 584.

BILL OF COSTS.

Gross sum in discharge of claim.—*Delivery of bill necessary.*—A gross sum was paid to a solicitor in discharge of his claim, but no bill of costs was delivered: *Held*, that the client was entitled to have a bill of costs delivered. In *re Blackmore*, 13 Beav. 154; In *re Billing*, ib.; In *re Spike*, ib.

CORONER.

Certain freeholders of the county of *S.* presented a petition to the Lord Chancellor, praying that the writ issued for the election of a coroner might be set aside, or its execution stayed until after a meeting of Quarter Sessions, at which the magistrates of the county intended to propose a division of the office. The Lord Chancellor, in the absence of any authority in support of the application, refused to interfere. In *re Coronership of the County of Salop*, 1 M.N. & G. 377.

COSTS OF TAXATION.

1. *When items struck out as not chargeable against client.*—Under the Solicitors' Act, items struck out of a bill of costs on taxation, as not chargeable against the person to whom the bill is delivered, must be taken into account in determining the costs of taxation. In *re Clark*, 1 De G., M.N. & G. 43.

2. *Items struck out as chargeable against another person.*—Since the last Solicitors' Act, items struck out of a solicitor's bill on taxation, as chargeable against another person, must be taken into account, in determining the costs of taxation. In *re Clark*, 13 Beav. 173.

COUNSEL'S ADVICE.

How far action justifiable by advice of counsel.—*Quere*, how far an attorney is justified, as

between him and his client, by the opinion of counsel, in prosecuting an action which is unsuccessful, and which the Court considers to have been groundless. In *re Clark*, 1 De G., M.N. & G. 43.

DELIVERY OF BILL.

Waiver of want of signature, effect of.—A solicitor who delivers an unsigned bill of costs is bound by it; but his client may either treat it as a nullity or waive the want of signature, and adopt it, though after such waiver, the client cannot treat the bill as undelivered. In *re Gedge*, 14 Beav. 56.

And see *Bill of Costs; Taxation after a Year, 2; Trustees and Executors.*

LIEN.

1. *Mortgage, priority.*—A purchaser of property subject to a mortgage, made before the completion of his purchase, a second mortgage of it. He afterwards created a third mortgage, with respect to which the second mortgagee's conduct was such as to give it priority over his. Then the purchase was completed, the purchaser paying off the first mortgage, and taking a conveyance to a trustee for himself. On this occasion the title deeds were handed to his solicitors, who afterwards took a transfer of the third mortgage. One of them was the trustee for the purchaser in the conveyance. The second mortgagee did not give them, nor had they any notice of his security.

Held, that, nevertheless, their lien, either for their general bill of costs, or for their costs relating to the conveyance, could not prevail against the second mortgagee, the rights of a solicitor in respect of his lien for his bill of costs being no greater than those of the client, and the circumstances of the case not exempting it from the scope of this rule. *Pelly v. Wathen*, 1 De G., M.N. & G. 16.

2. *On depositions.*—*Fees.*—Commissioners for the examination of witnesses have a lien on the depositions for their fees, and will not be compelled to return them, until they have received payment. *Peters v. Beer*, 14 Beav. 101.

3. *Where solicitor takes partner.*—*Quere*, whether the lien of a solicitor is affected by his taking a partner. *Pelly v. Wathen*, 1 De G., M.N., & G. 16.

Case cited in the judgment: In *re Forshaw*, 16 Sim. 121.

ORDER OF COURSE.

Statement of facts.—A party applying for an order of course should state everything which can have a bearing on the matter, otherwise the order will be discharged. In *re Walker*, 14 Beav. 227.

ORDER FOR PAYMENT.

Notice of motion.—A sum being, on taxation, found due from a solicitor to his client, the first order fixing a day for payment must be obtained on notice; but the second or fourth day order is made *ex parte*. In *re Stevenson*, 14 Beav. 27.

PARTNER.

Solicitor and client.—*Bill of exchange.*—

Costs.—A bill of exchange received by a partner in a solicitor's firm from a client is, *prima facie*, to be deemed to be received on behalf of the firm; and, if the solicitors allege the contrary, they are bound to prove it by clear evidence.

By the decree, the plaintiff's costs (319*l.*) had been ordered to be paid to her solicitors, out of a fund in Court, in which she was interested; but the plaintiff having, in the course of the proceedings, given to one of the firm of solicitors a bill for 300*l.*, which they had passed away, the order for the payment of the 319*l.* was stayed.

Remarks as to the effect of the 122nd Order of May, 1845. *Moore v. Smith*, 14 Beav. 393.

And see *Lien*, 3.

PRIVILEGED COMMUNICATIONS.

Letters.—The decision of the Vice-Chancellor Lord Cranworth, in *Goodall v. Little* (1 Sim. N. S. 155), "that there is no protection as to letters between parties themselves, or from a stranger to a party, merely because such letters may have been written in order to enable the person to whom they were sent to communicate them in professional confidence to his solicitor;" approved. *Glyn v. Camfield*, 3 M'N. & G. 463.

PRODUCTION OF DOCUMENTS.

1. **Husband and wife.**—Wherever husband and wife have distinct interests, and the wife is induced in dealing with those interests, to act under the advice of an attorney employed and paid by the husband, the attorney must be deemed to act as the attorney of both husband and wife, and each of them has a right to call for the production, and to have full inspection of all documents that may come into the possession of the attorney during such employment, relating to the transactions and to the advice given by the wife. *Warde v. Warde*, 3 M'N. & G. 365.

2. **Admission of joint possession.**—A defendant admitted that certain documents were in the possession of himself and *W. C.*, his co-executor, and that others were in the possession of their joint solicitor. *W. C.* not being a party to the suit: *Held*, that an order for production could not be made against the defendant on such an admission. *Morrell v. Wootten*, 13 Beav. 105.

Case cited: *Murray v. Walter*, Cr. & Ph. 114.

RETAINER.

1. **Action brought in name of third party.**—*Unsuccessful and desperate action.*—*Evidence of advice to client.*—*Costs of appeal.*—An attorney delivered a bill of costs to a client, comprising the costs of an unsuccessful and desperate action of replevin, which the attorney had brought, not in the name of the client, but (as the attorney alleged) by the client's direction.

The evidence adduced to prove this allegation was held by the Court to be insufficient.

Held, that the item could not be allowed; and, *semble*, that it could not be enough for the attorney to prove the direction to have been given without also proving that he had properly advised the client as to the desperate character of the proceeding.

Semble, that it was within the functions of the taxing officer to require proof of such direction, and of such advice having been given, before he allowed an item in respect of the action.

Where the Court concurred in opinion upon the effect of the evidence as it stood, and only differed upon the question whether the appellant should have an opportunity of proceeding at law, *held*, that the appeal ought to be dismissed with costs. *In re Clark*, 1 De G., M'N. & G. 43.

2. **Charging person with costs of legal proceedings in the name of another.**—*Evidence.*—A solicitor seeking to charge a person with the costs of legal proceedings conducted in the name of another, must support his claim by the clearest and most unequivocal evidence. *In re Clark*, 13 Beav. 173.

SUBSTITUTED SERVICE.

A defendant who had appeared by a solicitor in the original suit, but not in the supplemental suit, being in contempt, went to reside abroad. The Court ordered that service on the solicitor of the proceedings in the supplemental suit should be good service. *Scott v. Wheeler*, 13 Beav. 239.

SUITORS' FUND SOLICITOR.

Foreclosure suit.—*Costs as guardian to infant defendants.*—Where the solicitor to the Suitors' Fund had been appointed to act, and acts as guardian for infant defendants in a foreclosure suit, at the request of the plaintiff, under the 28th Order of October, 1842, the Court, upon making a decree of foreclosure will direct the plaintiff to pay the guardian's costs and to add them to his own, even where the security is inadequate. *Harris v. Hamlyn*, 3 De G. & S. 470.

SUMMARY JURISDICTION.

Costs.—*Set-off.*—By an order of the Court, the costs to be incurred by a married woman suing by her next friend in a future proceeding, were ordered to be paid to *A. B.*, her solicitor. Pending the proceedings, *A. B.* was discharged, and *C. D.* appointed solicitor. *A. B.* received the whole costs: *Held*, that the Court had jurisdiction, on petition, to order *A. B.* to pay over to *C. D.* his share of such costs; and, secondly, that *A. B.* could not set-off, as against the amount, a debt due to him from the next friend. *Ex parte Bailey and Hope*, *in re Barnard*, 14 Beav. 18.

And see *Agen*.

TAXATION.

1. **Costs of order for payment.**—Upon a motion after taxation, for an order on a solicitor to pay the amount found due from him, he

was also ordered to pay the costs of the application. *In re Bainbrigg*, 13 Beav. 108.

2. *Order by consent for taxation.—Omission of costs from Master's certificate.—Reference back.*—Two solicitors, A. and B., dissolved partnership, and it was agreed, that B. should be entitled to half the profits of a suit instituted by them. After some time, an order was made, by consent of both, for the taxation of the costs down to the date. Some of the costs had, unknown to B., been already taxed and received by A.: *Held*, under the circumstances, that the order comprised all such costs, and the previous costs having been omitted in the Master's certificate, the Court, upon a petition to review the taxation, referred the matter back to the Master. *Greenwood v. Churchill*, *in re Baker and Hodgson*, 14 Beav. 160.

3. *Payments by solicitor.—Fees on taxation.*—Costs, charges, and expenses of and incidental to the sales of the real estates of the testator in the cause, were by the decree ordered to be taxed and paid. On making out these costs, charges, and expenses, it appeared that 340l. had been paid for surveying and selling the estates, upon which the fee of taxation of 3l. per cent. attached. In order to avoid this fee, a motion was made, all parties consenting, to vary the order by only directing the Taxing Master to add to the amount of the taxed costs of the plaintiffs any sums which he should find to have been properly paid by them to any surveyor or other person, as his charge for valuing or otherwise, in reference to the sales. The Court varied the order accordingly. *Bellas v. Harmer*, 3 De G. & S. 454.

4. *Where no over-charges or pressure.*—The Court, notwithstanding there was not such pressure or such allegations and proof of over-charges as have been usually relied on in such cases, ordered the taxation of a solicitor's bill after payment. *In re Blackmore*, 13 Beav. 154; *In re Billing*, *ib.*; *In re Spike*, *ib.*

TAXATION, EX PARTE ORDER.

Suppressio veri.—*Discharge.*—A. B. employed a solicitor in the matter of a mortgage, and there was a dispute between them whether he was not also liable for the costs of legal proceedings taken in the name of a third party. A. B. obtained *ex parte* at the Rolls an order for taxation; he stated, however, the mortgage transaction alone, and suppressed the other matters. It was discharged on the ground of suppression. *In re Walker*, 14 Beav. 227.

Case cited in the judgment: *De Feuchères v. Dawes*, 11 Beav. 46.

TAXATION AFTER A YEAR.

1. *Possession of paper in cause insufficient.*—*"Special circumstance."*—The possession of the papers in a cause is not a sufficient circumstance to warrant the taxation of a bill delivered more than 12 months. *In re Gedge*, 14 Beav. 56.

2. *Unsigned bills of costs.—Special circumstances.*—After 12 months from the delivery of unsigned bills, the client applied for their tax-

ation; *Held*, that he was not entitled, except on showing sufficient "special circumstances." *In re Gedge*, 14 Beav. 56.

TRUSTEE.

Evidence of truth of recitals in deed appointing attorney trustee.—Setting aside.—Onus probandi.—A deed prepared by an attorney, and executed by his client, a young man who had applied to him to procure a loan of money, settling the property of the client so as to restrict his power of dealing with it, and appointing the attorney the trustee, recited that the trusts of the deed were created at the desire of the client, and for the purpose of placing the property under the management of the attorney. The client, by his bill to set aside the deed, denied the truth of the recitals, and insisted that the settlement was made without his knowledge or authority. The attorney, by his answer, alleged that the recitals were true, and that the deed was made and executed with the knowledge and authority of the client, and in order to prevent him from dissipating his property, but gave no evidence of such knowledge or authority. The Court *held*, that the burden of proof was upon the attorney, and set aside the deed, with costs to be paid by him. *Moore v. Prance*, 9 Hare, 299.

TRUSTEE AND CESTUI QUE TRUST.

Administration.—*Costs.*—The rule which allows a solicitor, being also a trustee and a party to a cause, to charge full costs, where he acts in the suit for a body of trustees, of which he himself is one, does not apply to the case of a solicitor being a trustee and acting as solicitor for himself and his co-trustees in the administration of the trust estate out of Court. *Lincoln v. Windsor*, 9 Hare, 158.

Cases cited in the judgment: *Christophers v. White*, 10 Beav. 523; *Cradoek v. Piper*, 1 M'N. & G. 608; 1 H. & T. 617.

TRUSTEES AND EXECUTORS.

Delivery of bill of costs to residuary legatee.—*Payment.*—The solicitor of trustees and executors received payment of his bill of costs out of the estate: *Held*, that a residuary legatee was entitled to have a copy of the bill delivered on payment of the costs of it. *In re Blackmore*, 13 Beav. 154; *In re Billing*, *ib.*; *In re Spike*, *ib.*

TRUSTEES AND SOLICITOR.

Breach of trust.—Right of cestui que trusts to sue.—Trustees of stock sold it out, and committed the proceeds to their solicitor for investment, by whom it was misapplied and lost: *Held*, that the trustees were liable for a breach of trust, and that the *cestuis que trust* were entitled to relief against both the trustees and the solicitor, and that they might sue either the trustees alone, or the trustees jointly with the solicitor. *Rowland v. Witherden*, 3 M'N. & G. 568.

UNSIGNED BILL.

See *Delivery of Bill*.

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SATURDAY, JUNE 19, 1852.

COUNTY COURTS' FURTHER EXTENSION BILL.

THE Bill under this title, which has just passed the House of Commons, has shrunk upon re-commitment to seventeen clauses. The printed Bill, as amended by Committee, contained six-and-twenty sections. The title is still retained of "An Act further to extend the Jurisdiction of the Judges of the County Courts, and to facilitate Proceedings in the High Court of Chancery," although the only remaining provision which can be properly described as an *extension* is that which extends the salaries of the County Court Judges, and our readers would search in vain to discover a clause containing any reference whatever to the proceedings of "the High Court of Chancery."

Considering that the Bill imposes no additional duties of any sort upon the County Court Judges, if it should obtain the Royal Assent in its present shape, those functionaries will have little reason to complain of its operation. The salary now payable to each of the County Court Judges is one thousand per annum; but by a clause in the present Bill, which is jocosely described as *limiting* the salaries of the Judges, it is proposed, that "after the passing of this Act the greatest salaries to be received in any case by the Judges and clerks of the County Courts respectively shall be 1,500*l.* by a Judge, and 700*l.* by a clerk, but in no case shall any Judge be paid a less salary than 1,200*l.*"

The County Court Judges are also to have retiring pensions in case of disability, upon the recommendation of the Lord Chancellor, under the following clause:—

"That it shall be lawful for the Lord Chancellor, from time to time, on a petition presented to him for that purpose, to recommend

to the Commissioners of her Majesty's Treasury that there shall be paid quarterly, out of the Consolidated Fund of Great Britain and Ireland, to such of the Judges of the County Courts as shall be afflicted with some permanent infirmity disabling him from the due execution of his office, and who shall be desirous of resigning the same, an annuity or clear yearly sum of money for the term of his life, not exceeding two-thirds of the yearly salary which such Judge shall be entitled to as a Judge of the County Court at the time of presenting his petition; and such annuity or sum shall be paid out of the Consolidated Fund of the United Kingdom quarterly or otherwise, as the said Commissioners may direct."

But as a make-weight to those unquestionable advantages, it is proposed to enact that, "after the passing of this act no Judge of the said County Courts shall practise at the Bar, or as a special pleader or Equity draftsman, or be directly or indirectly concerned as a conveyancer, notary public, solicitor, attorney, or proctor;" a provision which we apprehend will not very materially interfere with the professional prospects of any of the gentlemen at present holding office as County Court Judges.

The clause enabling the Treasury to grant retiring pensions to Judges afflicted with permanent infirmity is manifestly expedient, as the absence of such a power might operate injuriously to the public by inducing Judges to retain office when from mental or corporal infirmity they ceased to be able to discharge their duties satisfactorily. The preceding enactment, which leaves it to the discretion of those in authority to determine whether the salary of a County Court Judge should be fixed at 1,500*l.* or 1,200*l.* per annum, is decidedly objectionable, and calculated, as far as these functionaries are concerned, to render them dependent upon the Government of the day, and by lowering their position to diminish the utility of

the Courts over which they preside. It is possible, however, that a positive addition of 200*l.* per annum, and a prospect of a further increase of 300*l.*, may, in the opinion of some at least of the County Court Judges, compensate for the loss of dignity sustained by placing their salaries on so different a footing from those of the Judges of the Superior Courts.

The following clause, relating to the re-issuing of warrants of execution, has been introduced in the Bill on re-commitment; but we cannot congratulate the draftsman upon his success in ~~clearly~~ expressing what, it may be presumed, was the intention of the Committee. It seems hardly intelligible:—

“That in all cases where a warrant of execution shall have been issued against the goods and chattels of any person, or an order for his commitment been made, and such person or his goods and chattels shall be out of the jurisdiction of the Court, and such warrant or order shall have been sealed and stamped by the clerk of another County Court, pursuant to the 104th sect. of the Act of the 9 & 10 Vict. c. 95, it shall be lawful for the said clerk of the Court to re-issue the said warrant or order to the high bailiff of the Court from whence the same originally issued, and thereupon such high bailiff shall be authorised and required to act in all respects in the execution of the said warrant or order within the jurisdiction of the Court, to which the same shall have been so sent in the same manner, with the same powers, and subject to the same rules as if the district to which the warrant or order shall have been sent were within the limits of the Court which originally issued the warrant or order.”

The clause relating to the persons qualified to practise in the County Courts remains unaltered on re-commitment. The provision of the 9 & 10 Vict. c. 95, declaring, that no person should be entitled to appear for any party in the County Courts, unless he be an attorney or a barrister instructed by such attorney is repealed, and it is now declared, “that it shall be lawful for the party to the suit or other proceeding, or for an attorney of one of her Majesty's Superior Courts of Record retained by or on behalf of the party, or for a barrister retained by or on behalf of the party, on either side, or, by leave of the Judge, for any other person allowed by the Judge to appear instead of the party, to address the Court, without any right of exclusive or pre-audience, but subject to such regulations as the Judge may from time to time prescribe for the orderly transaction of the business of the Court.”

We have already, upon more than one

occasion, stated the grounds upon which we deem it injurious to the public and the Profession to alter the law restricting a barrister from appearing as an advocate in the County Courts, unless he is instructed by an attorney. The etiquette of the Bar, operating with all the force of law on the respectable portion of that branch of the Profession, had established the rule that a barrister should not appear in Court without instructions from an attorney, long before the County Courts' Act was thought of. The intermediary agency of an attorney between the parties and the counsel has been declared by the Bench¹ to be eminently “conducive to the due administration of justice.”

It was felt, however, that when the County Courts were placed on their present footing, it was possible a race of barristers might spring up and frequent those Courts, who would not be altogether influenced by the prevalent feeling of the heads of the Profession, and who may be tempted to disregard the almost uniform usage which has prevailed upon this subject for more than a century. Experience has justified the wisdom of this precaution. Junior members of the Bar, of great learning and ability, and of the highest character, are occasionally—when the nature of the cause and the condition of the parties admit of it—taken to the County Courts by attorneys; but unfortunately some of those Courts are attended by members of the Bar who do not reflect credit upon that branch of the Profession, and whose irregularities are advantageously kept in check by the statutable provision contained in the County Courts' Act. After the discussion which the question has undergone, if that provision be now repealed, it is not improbable a section of the Junior Bar will assume that its repeal is, not only a recognition of the privilege to practise in the County Courts without the agency of an attorney, but equivalent to a legislative condemnation of the etiquette which has hitherto been generally adhered to by the Bar. This view, if acted upon to any considerable extent, we are satisfied would be productive of the most injurious consequences to the Profession generally, but especially and peculiarly to the Bar.

It must be recollected, however, that the County Courts' further Extension Bill has to return to the House of Lords, where the

¹ See the judgment of the Court of Queen's Bench in *Doe dem Bennett v. Hale*, 15 Queen's B. Reports, p 186.

amendment made by the House of Commons in Committee repealing the provision of the 9 & 10 Vict. c. 95, will be re-considered. Upon a former occasion, when the Bill was depending in the Upper House, the late Lord Chancellor Truro, and the present Lord Chief Justice Campbell, expressed the strongest and most conclusive opinion against the expediency of the proposed repeal, upon grounds nearly similar to those above suggested. To the opinion then expressed, and in which nearly all the senior members of the Profession participate, we have no doubt the noble and learned Lords are prepared to adhere, and we entertain a confident expectation that through their intervention, the mischiefs resulting from the alteration of the law proposed in the House of Commons will be averted.

NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

MAINTENANCE OF POOR.

15 VICT. c. 14.

An Act to continue an Act of the Fifteenth Year of her present Majesty, for charging the Maintenance of certain poor Persons in Unions in England and Wales upon the Common Fund. [28th May, 1852.]

Whereas by an Act passed in the 14 & 15 Vict. c. 105, certain provisions made by the several Acts therein referred to for charging upon the common fund of the union the costs of the relief and the expenses of the burial of certain poor persons in the several Acts described, and the costs of removing and maintaining certain lunatic paupers, were continued until the 30th day of September, 1852, and to the end of the then next Session of Parliament, and it is expedient that all the said provisions should be continued for a limited time: Be it therefore enacted, That all the said several temporary provisions in the said Acts above referred to shall continue in full force until the 30th day of September, 1853, and to the end of the then next Session of Parliament.

ECCLESIASTICAL JURISDICTION.

15 VICT. c. 17.

An Act for further continuing certain temporary Provisions concerning Ecclesiastical Jurisdiction in England. [28th May, 1852.]

Whereas by an Act passed in the Session holden in the 10 & 11 Vict. c. 98, intituled "An Act to amend the Law as to Ecclesiastical Jurisdiction in England," by which it was enacted, that certain of the provisions therein contained should continue until the 1st day of August, 1848, and, if Parliament were then sitting, until the end of the then Session of Parliament; and such provisions have been continued by sundry Acts until the 1st day of

August, 1852, and to the end of the then next Session of Parliament: And whereas it is expedient that the said provisions should be further continued: Be it therefore enacted, That the said provisions of the said Act shall continue until the 1st day of August, 1853, and to the end of the then next Session of Parliament.

THE ANNUAL CERTIFICATE DUTY.

CIRCUMSTANCES have again proved peculiarly unfavourable for the hearing of Lord Robert Grosvenor's motion.

The morning sitting, which commenced at 1 o'clock, was continued till 5, and the House then adjourned till 7 o'clock—unfortunately in the midst of the general dinner-hour. At 7 o'clock, however, the Speaker took the Chair, and some ordinary business was despatched. Mr. Anstey then brought forward his motion relating to the treatment of three of the missionaries in Austria. After several strong animadversions on the Foreign Minister and the conduct of our Ambassador, the learned member was proceeding with numerous details in support of his complaint, when a member on the ministerial side of the House had the House counted, and 37 members only being present, the House immediately adjourned.

It will be recollected that the debates of the previous night continued until 3 o'clock in the morning of Tuesday, and, after several hours passed in the morning sitting, it is not to be wondered at that the members did not re-assemble at 7 o'clock. If Mr. Anstey's animated harangue had continued until 9 o'clock, there would probably have been a good House and the case of the Attorneys might have been favourably heard.

It is understood that the Parliament will be very soon dissolved, and consequently the appointment of another day would be useless.

We are aware that there was some difference of opinion as to the expediency of pressing for the repeal in the present Session, because some of the friends of the measure who supported the new Government might be placed in a difficult position. If there had been a division, some votes of former Sessions might have been lost, but, on the other hand, some of the supporters of the late ministry would have been gained.

At all events, we think that Lord R. Grosvenor and the promoters of the measure have acted wisely in bringing it again before Parliament, and not allowing the Session to pass in silence. Two hundred

petitions have been presented, comprehending practitioners in all parts of the empire, and every member of the House has had his attention called to the subject and must be prepared early next Session to come to a final decision.

LAW OF ATTORNEYS.

UNDERTAKING TO PAY COSTS.

MR. ELLABY was the attorney in an action brought in a County Court, in which the plaintiff was nonsuited. The plaintiff subsequently employed Mr. Underwood to commence an action for the same cause in the Court of Exchequer, and he, requiring the papers for that purpose, proposed to Mr. Ellaby that he should accept from the plaintiff 2s. per week in payment of his costs, and deliver up the papers upon the undertaking of Mr. Underwood to pay out of the first moneys which might come to his hands in that or any other proceeding on the plaintiff's account whatever balance might remain due. Ellaby wrote to Underwood consenting to this proposal; and in answer, Underwood sent him the following letter:—

"Tharrait v. Trevor.

"DEAR SIR,—I have advised the plaintiff to pay to you the sum of 2s. per week, the sum mentioned in your favour of this date, which she has agreed to do; but of any moneys which I may receive on this or any other proceeding on her account, I will hand you such balance as may remain due on your bill of costs as settled at 9l.

"I remain, &c.,

"A. UNDERWOOD."

The papers were delivered up, and the action having proceeded, the plaintiff obtained a verdict and judgment, and Mr. Underwood received the damages and costs. Application was then made to him for payment of 7l. 10s., which remained due to Mr. Ellaby in respect of his costs; and payment having been refused, this rule was obtained.

The Court took time to look into the affidavits and consider the effect of the undertaking. The following is extracted from the judgment of Mr. Baron Parke:—

"In consideration of the undertaking, the papers were handed over to Mr. Underwood, who from that time conducted the suit, which is now brought to a termination, and he has received the proceeds. Mr. Bramwell, on showing cause, set up for the first time—because that never appears to have been set up in the correspondence, nor was the objection ever made in the affidavits,—that his client was only

bound to pay out of the surplus after deducting his own bill as an attorney, for which he had a lien on the sum recovered; and a doubt was entertained at the time of the argument, whether that was the meaning of the contract or not. We have all of us considered it, and are satisfied that there was an obligation on Mr. Underwood to pay out of the moneys which he received without insisting on his own lien." *Tharrait v. Trevor*, 7 Exch. R. 161.

ANNUAL MEETING OF THE INCORPORATED LAW SOCIETY.

ON Tuesday last, the 15th instant, the Annual General Meeting of the Members of the Incorporated Law Society, was held in the Hall of the Society, for the election of the President, Vice-President, and 12 Members of the Council, and of three Auditors, and for other purposes of the Society.

The Chair was taken by John S. Gregory, Esq., the President.

The following gentlemen were re-elected:—Samuel Amory, Thomas Clarke, Richard Harrison, Bryan Holme, Henry Lake, Edward Lawford, Joseph Maynard, Charles Ranken, and Edward White.

Mr. William Williams was elected in place of Mr. R. R. Bayley, deceased, and Mr. Augustus Warren and Mr. E. S. Bailey, in lieu of Mr. John Innes Pocock and Mr. Charles Shadwell, resigned.

Mr. Coverdale was elected President, Mr. Kinderley, Vice-President, and Mr. Chisholme, Mr. Hawkins, and Mr. Milne, Auditors of the Society.

The Report of the Council was then read by the Secretary, and ordered to be received and entered on the minutes, and such parts thereof as the Council think fit to be printed. The Auditors' report on the Accounts of the Society for the last year, was also read and approved.

We hope to lay before our readers the valuable Report of the Council at an early period.

These annual statements, revised and considered by the most able and experienced solicitors, relating to the progress and results of the various alterations in the law and the practice of the Courts from year to year, are of the greatest importance both to the public and the Profession.

RESULT OF THE TRINITY TERM EXAMINATION.

At the Examination of Candidates for the Roll of Attorneys and Solicitors, on the 3rd instant, 80 only were passed, two withdrew during the Examination, and 10 were postponed. The Examiners were Master Ray, Mr. Holme, Mr. Pemberton, Mr. Ranken, and Mr. Wilde.

The number on the printed List of Applicants was 148, besides 11 who were added under Judges' orders, making 159. A large proportion of these had been examined and passed in Easter Term, but gave second notices for Trinity Term by way of procrastination, in case they should be unable to attend or were not passed.

The newspapers, looking at the public List, are in the habit of commenting very erroneously on the enormous increase of the Profession, and in this instance it will be observed that scarcely more than one-half of the supposed number can be actually admitted.

METROPOLITAN AND PROVINCIAL LAW ASSOCIATION.

ANNUAL REPORT.

[Concluded from page 120, ante.]

The Report next proceeds to notice the various proceedings which have taken place relating to the County Courts, which we laid before our readers at p. 63, ante.

"Reform of Superior Courts.—It is quite true that the complicated nature of the systems of administering justice in our Superior Courts, together with the heavy fees levied upon the suitors, have rendered the delay and expense of an action at law a very considerable grievance. The obvious remedy for this would have been a reform of those Courts including the simplification of the proceedings, and a great diminution in, if not the entire abolition of, all Court fees. This, accordingly, has long been advocated by those best acquainted with the real nature of the evil to be contended with, and by this Association since its first foundation; and it is now at length proposed to be effected by the Common Law Procedure Bill, which is founded on the recommendations contained in the report of the Common Law Commissioners, whose appointment was mentioned by the Committee last year.

"Public Indexes.—The imperfect and inconvenient way in which the various public indexes are kept, is a practical evil which more or less affects solicitors throughout the country. It would seem, also, to be capable of a simple and easy remedy, as it cannot be the interest of any one that the indexes should remain imperfect,

and the expense necessary for their improvement should be provided for by the search-fees. The Committee have, therefore, collected information as to the mode in which the various public indexes are at present kept, and are preparing a short bill to provide that they shall in future be all kept upon a system which shall facilitate searches, and, as far as possible, prevent mistakes. In many cases, where the entries are not frequent, the lexicographical form may be completely carried out; and in all it might be so, so far as the initial letter and first vowel. The Committee find that the index kept in the Legacy Duty Office by Mr. Trevor, the nature of which is explained in the evidence given by that gentleman to the Registration Commissioners, although dealing with complicated materials, yet affords great facility for reference.

"Equity Reform.—Court of Appeal.—The reform of the Court of Chancery has continued to be, perhaps, the most prominent and important of the legal reforms attempted by Parliament; and, on the whole, the Committee conceive that several important steps, in the right direction, have been taken. The Act of last Session, creating the new Court of Appeal in Chancery, was a very important improvement. This act was framed entirely in accordance with the principle which this association has been long urging upon Parliament; namely, that there should be a Court of Appeal composed of a plurality of Judges, and not dependent for its existence upon the changes of political parties. When the General Orders of Lord Truro appeared in March last, reducing some of the Chancery Fees, the Committee stated, that although they afforded partial relief, they would yet leave a very wide margin of surplus taxation. The annual return of the Accountant-General, up to November last, shows that the surplus on the year then ending, amounted to 41,473*l.* 16*s.* 4*d.*

"Suitors' Relief Bill.—Court Fees.—At the commencement of the present Session, the last government introduced a Bill, entitled 'A Bill for the Relief of Suitors in the High Court of Chancery,' for the purpose of further reducing the fees, the provisions of which are principally founded on the recommendation made by the Select Committee of the House of Commons on Fees in 1849. The Committee last year prepared a Bill founded entirely upon that report, which they placed in the hands of the Master of the Rolls, in the hope that he would introduce it into the House. He did not, however, do so; and although the present Bill contains several similar provisions, yet it does not comprise nearly all the recommendations of the Select Committee. Your Committee have, therefore, presented a petition for extension and improvement. Having regard to the peculiar circumstances affecting the present Session of Parliament, the Committee have not attempted to introduce any extensive alterations in the Bill, seeing that by so doing, they might endanger its passing at all, and that even in its present shape, it will be attended with great

advantages both to the suitors and to the Profession. The Committee are particularly glad to see the principle recognised that the expense of Courts of Justice ought to be borne, not exclusively by the suitors, but by the public. This is done by providing that the salaries of the Lord Chancellor, and such of the Judges of the Court of Chancery as have hitherto drawn their salaries from the Suitors' Fund, shall in future be paid, like those of the Common Law Judges, out of the Consolidated Fund. They are also glad to see the principle of paying the officers of the Court by salary, instead of by fees, further acted upon; and, also, that the fees are to be collected by means of stamps—a practice which has been for years adopted in Ireland, and found to work exceedingly well. The Bill also proposes to abolish various useless offices. It, however, contains, an objectionable provision empowering the Lord Chancellor and the Master of the Rolls to fix the amount of the salaries of their own officers—a principle which was specifically condemned in the second report of the Select Committee on Fees in 1850, in which the Committee state 'that they cannot help viewing, with considerable jealousy, the power which the Lord Chancellor is thus able to exercise of burdening at pleasure the Suitors' Fund with permanent charges; and they are of opinion, that the sanction of Parliament should always be obtained before any such charges are laid upon this fund.' The Committee, in their petition, have prayed that the amounts of all salaries may be fixed by Parliament; and have also urged that advantage ought to be taken of this opportunity to abolish certain offices not at present included in the Bill, and to apply, in aid of a much more sweeping reduction of fees, some part of the vast accumulations of money standing in the name of the Accountant-General, and belonging to the suitors. In particular, the Committee have pointed out, that the office of Clerk of Accounts, which was reported to be useless by the Select Committee, ought to be abolished; and that, in fact, the entire establishment of the Accountant-General might be dispensed with, by the adoption of a system by which the Court should employ the Bank of England to pay the suitors who may be considered its creditors, exactly in the way in which the government already employ the bank to pay the claimants on the National Debt; and that this alteration, besides being a very great pecuniary saving, might be the means of introducing a much more satisfactory system than that which at present exists.

Orders of Course.—The Committee have again pointed out the indefensible nature of the orders known as Orders of Course, and the saving which would be effected by abolishing the office which is kept up on their account. The drawing of these orders was originally a part of the ordinary duty of the registrars, and was actually taken into account in 1831, in fixing the amounts of the salaries and compensations now enjoyed by those officers. Almost immediately afterwards, the under-secretary of

the Master of the Rolls was empowered to draw up these orders at a slightly reduced fee. The effect of this has, of course, been, that all the Orders of Course are now drawn up at the Rolls, where the fees are kept by the officers; and the suitors are, therefore, paying for them twice over, and have a right to demand that if any of them are to be preserved, they shall be drawn up, as formerly, by the registrars, but at the reduced fees.

Surplus Funds.—The Committee have further pointed out, that the interest of the fund which has been purchased with the surplus fees of the Court, and which now amounts to upwards of 200,000*l.*, together with the interest of the stock in the hands of the Accountant-General, which has not been dealt with for 10 years and upwards, and which amounts to a further sum of considerably more than 300,000*l.*, answering to the Unclaimed Dividends of the National Debt, ought to be applied towards the expenses of the Court in aid of the suitors, instead of being, as now, allowed uselessly to accumulate, for the possible benefit of future generations. The Committee have also pointed out three other modes by which the suitors might be easily benefited. First, that in that large class of cases in which the Court is administering property, whatever taxation may be considered necessary, ought to be raised on the principle of a per-centage, instead of by a fixed fee upon each step in the proceedings by which system the rich and the poor suitor are made to pay equally. Secondly, that a portion of the surplus funds in the hands of the Court should be invested in the purchase of Government Terminable Annuities, which would increase the present income of the Court, for the period over which the heavy compensations which have been granted of late years may be expected to extend, by which means the suitors of the present day might, to some extent be relieved. Thirdly, the Committee have pointed out the hardship it is upon suitors in the Court of Chancery, and especially those living in the country, to be put to the expense of a stamped power of attorney, if they cannot attend personally, whenever they have to receive any deeds or papers, or any sum of money, however small. This tax is not imposed on persons receiving money out of the Court of Bankruptcy, and there is not any reason why it should be retained in Chancery.

"Almost all of these suggestions have already received the sanction of Select Committees of the House of Commons, including important members both of the late and the present Government. They have been favourably received when lately renewed by the Committee, and the Committee entertain a hope that many of them will be ultimately incorporated in the present Bill.

Masters' primary Jurisdiction.—The Bill which was prepared two years ago by the Committee, for the purpose of giving to the Masters in Chancery primary jurisdiction in certain cases, which in 1850 passed the House of Lords and was read twice in the House of

Commons, was again, last year, introduced into the House of Lords by Lord Brougham, and, after being read twice, was referred to a Select Committee, before which the Chairman and several members of this Committee gave evidence. The Bill was not reported upon by the Select Committee, but all the evidence taken has been printed by the House and has been widely circulated by this Committee, and, they believe, has been useful in spreading sound ideas upon the subject of Equity Reform. The following circumstances will explain the grounds upon which the Committee have resolved not further to urge the adoption of that Bill.

"Solicitors' Commission."—In their last report, the Committee mentioned that the Council of the Incorporated Society had, at their suggestion, appointed a large Equity Committee, including the most active members of this Committee, to inquire into the practice of the Court of Chancery, and the best means of improving it. That Committee prosecuted their inquiries actively throughout the year, and on the 2nd of December last, completed their report, a copy of which was sent by this Committee to each of the provincial members of the Committee. About six weeks after the appearance of that report, the Royal Commissioners published theirs, and the Committee were somewhat surprised to find that the Commissioners did not notice the solicitors' report, which had been duly communicated to them as soon as it was complete, although they placed, in an appendix to their own, several other documents which had been communicated to them, by way of suggestion, including a report from the Hull Law Society, which had been sent to them through this association. What were the reasons for treating the report of the solicitors with this neglect your Committee do not know; but it cannot fail to be observed, that the suggestions of the Commissioners substantially agree with those of the solicitors' report. This, however, is not surprising, inasmuch as the Commissioners were themselves necessarily very imperfectly acquainted with the practical details of the subject with which they were dealing, a subject entirely and exclusively within the personal experience of solicitors, and, accordingly, we find that of the twelve witnesses examined by the Commissioners, nine were solicitors, some of whom had been actively engaged upon the Equity Committee. The silence observed by the Commissioners with regard to the labours of the solicitors, to promote Equity Reform, was felt to be unfair; and the gentlemen who drew up the very able and important report issued by the Incorporated Society, felt bound to secure that the House should, at all events, have both reports before them. For this purpose, they applied to Mr. Mullings, whose rising estimation in the House, coupled with his uniform readiness to vindicate the rights of his own branch of the Legal Profession, renders him a very able and efficient representative of our branch of the Profession.

On his motion, the House has ordered a copy of the report of the Equity Committee, and of the correspondence with the Commissioners thereon, to be laid before it, and your Committee hope that it is a document which is calculated to vindicate the title of the body from which it emanates, to that confidence and consideration which have always been claimed for it by this Association. Important, however, as this document is at this moment, it must be remembered that it is merely the development of those principles of Equity Reform, which have been for many years advocated by the principal practitioners in the Courts.

"The solicitors' report on some points is at variance with that of the Commissioners. The Committee, therefore, requested the Incorporated Society to consider how far a Committee, similar in constitution to their late Equity Committee, might not usefully be appointed, with the view of pressing the suggestions of the solicitors upon the Legislature; and upon this suggestion the Incorporated Society have re-appointed the Equity Committee, to whom they have also specially referred the subject of costs.

"Charity Trusts' Bill."—The Charity Trusts' Bill, which was last year passed by the House of Lords, and read once in the House of Commons, has this year been introduced into the House of Commons, and will probably pass. It is under the attention of the Committee.

"Registration of Assurances."—The subject of a General Registration of Assurances was last year taken up with great activity in the House of Lords, and the curious history of Lord Campbell's Bill the Committee have recorded in Circular No. 1. As the Committee then anticipated, Lord Campbell, at an early period in the Session, announced his intention of re-introducing the Bill. Had he done so, the Committee would have felt it their duty again to point out, in a petition, the objections they urged last year. The appointment, however, of Lord St. Leonards to the Chancellorship, and his known opposition to the whole registration scheme, has apparently, induced Lord Campbell to abandon his intention, and will probably, therefore, obviate the necessity, for the present, of any further exertions on the subject.

"Ecclesiastical Courts."—The subject of the Ecclesiastical Courts has continued in abeyance; and, considering the extent and variety of the schemes for Law Reform to which the Committee have had to give their attention in almost every other department, they think that this may be considered a fortunate circumstance. For although their conviction of the absolute necessity for a thorough reform of these Courts remains unabated, yet the subject is one of such magnitude, that they would be glad to see it dealt with at a time when a greater amount of careful consideration could be bestowed upon it. In the meantime, it can hardly be doubted that the reforms which are taking place in all the other Courts, will render it certain that when the subject is taken up—as it must be—by Government, a more complete and satisfactory scheme will be proposed

than could have been hoped for, had it been the first instead of the last of the series.

"Expenses of Prosecutions."—The Bill which was passed last Session, empowering the Secretary of State to make regulations as to the scale of payment of all costs, expenses, and compensations, to be allowed to prosecutors and witnesses, in cases of criminal prosecutions, has not, up to the present time, been acted upon. The present allowances are, in many respects, very unsatisfactory; and the Committee have applied to be allowed to see any proposed new scale before it is finally determined on.

"Criminal Law."—The Criminal Law Consolidation Bill, the Committee regret to say, has not this Session been brought forward.

"Law Bills in Parliament."—In the present Session, no less than thirty-four Bills have already been introduced into Parliament to effect alterations in the law—eleven in the House of Lords, and twenty-three in the House of Commons; and, as is apparent from what has been already stated, they are of very great importance.

"Provincial Law Societies."—The Committee have continued to maintain a frequent correspondence with many of the Provincial Law Societies, upon the various subjects from time to time occupying their attention; and they believe that this has been productive of the mutual advantage that it was anticipated at the foundation of the Association; on the one hand, by keeping the Committee informed of the views entertained by the provincial members of the Profession, and on the other, by giving notice to the provincial societies of the exact time at which their exertions, upon any important matter under discussion, may be most usefully exerted. Both these advantages are most completely attained where the secretary of the provincial law society is also a member of this Committee.

"Professional usage."—The Committee have also, during the year, had a considerable number of questions, upon points of professional usage and etiquette, referred to them by individual members, and they can only say, in the words of their report last year, 'Such intercourse as this has a double advantage: it forms a sort of friendly arbitration, by which questions may be disposed of with satisfaction to both parties, which might otherwise lead to unkind feelings and injurious divisions within the ranks of the Profession; it also tends to establish a uniformity of practice throughout the country.'

"Vacation Operations."—During the Long Vacation, the secretary visited the towns of Northampton, Leamington and Warwick, Coventry, Lichfield, Leicester, Nottingham, Grantham, Lincoln, Boston, and Louth. Meetings of the Profession had been previously arranged in all the towns, except Lichfield and Boston, where the secretary called upon the principal members of the Profession. The results of this journey were, on the whole, decidedly encouraging; a considerable number of new members joined the Association, and a greater disposition than

formerly was evinced to entertain the idea of a general union of the whole Profession throughout the kingdom.

"Insufficient support."—But the Committee have still to regret the very insufficient support the Association receives, compared with what the solicitors of the kingdom might afford it; and they must again call the attention of the members to the fact, that it is upon their personal exertions throughout the country that the extent and usefulness of the Association must greatly depend. The Committee have also to regret that many very important towns remain unrepresented at their board; and they would be very glad, at a time when the course of events peculiarly recommends union, to have the co-operation of gentlemen possessing the confidence of the Profession in such towns as Bath, Bristol, Nottingham, Leicester, Derby, Cambridge, Norwich, and Boston. They cannot doubt but that such a desirable extension might easily be obtained, by a little personal exertion on the part of such of their members as have any connexion with those towns.

"Removal of Offices."—In the course of last summer, the Committee removed the offices of the Association from Lincoln's Inn Fields, to 8, Bedford Row; where they have the advantage of a room sufficiently large to accommodate not only the Committee, but as many of their members as are likely to be able to attend the general meetings of the Association.

"Work of Committee."—The Committee are ready to devote what time and labour may be necessary to discharge the somewhat onerous duties which fall to their lot; but they fear that it is because the amount of exertion which they call upon their members generally to make is so small, that it is, in a majority of instances, entirely neglected. In order as far as possible to keep alive the interest of the subscribers, they have each year instructed the secretary to visit several of the provincial towns in the course of the Long Vacation; while, from month to month, a copy of their minutes is forwarded to every provincial member of the Committee, each of whom has thus the opportunity of keeping the subscribers in their own locality acquainted with the proceedings in London. The Committee having also now commenced the issue of a Periodical Circular to every subscriber, feel that they have done all that lies in their power to make the Association answer the wants of the Profession. And, as they have already frequently urged upon subscribers, the amount and value of their effective operations must entirely depend upon the amount of support they receive.

"State of the Association."—The Association now numbers 855 members, of whom 234 are metropolitan, and 601 provincial. The number of life members is 156. There are, therefore, 699 annual subscribers.

"During the year, including arrears, 476 subscriptions have been received. The total income of the Association has amounted to 516*l.* 1*s.* 8*d.*; and the expenses, including liabilities, to 492*l.* 14*s.* 7*d.*

**SUMMER CIRCUITS OF THE JUDGES,
1852.**

Erle, J., will remain in Town.

NORTHERN.

Lord Campbell, C. J., and Wightman, J.
Saturday, July 10, York.
Saturday, July 24, Durham.
Thursday, July 29, Newcastle.
Monday, August 2, Carlisle.
Thursday, August 5, Appleby.
Saturday, August 7, Lancaster.
Wednesday, August 11, Liverpool.

HOME.

Jervis, L. C. J., and Maule, J.
Saturday, July 10, Hertford.
Thursday, July 15, Chelmsford.
Wednesday, July 21, Lewes.
Saturday, July 24, Maidstone.
Saturday, July 31, Guildford.

NORFOLK.

Pollock, L. C. B., and Parke, B.
Tuesday, July 13, Aylesbury.
Friday, July 16, Bedford.
Monday, July 19, Huntingdon.
Wednesday, July 21, Cambridge.
Monday, July 26, Norwich and City.
Friday, July 30, Ipswich.

MIDLAND.

Alderson, B., and Cotesridge, J.
Tuesday, July 6, Oakham.
Wednesday, July 7, Northampton.
Saturday, July 10, Lincoln and City.
Wednesday, July 14, Nottingham and Town.
Saturday, July 17, Derby.
Wednesday, July 21, Leicester and Borough.
Friday, July 23, Coventry.
Saturday, July 24, Warwick.

OXFORD.

Cresswell and Williams, JJ.
Monday, July 12, Abingdon.
Wednesday, July 14, Oxford.
Saturday, July 17, Worcester and City.
Wednesday, July 21, Stafford.
Tuesday, July 27, Shrewsbury.
Friday, July 30, Hereford.
Monday, August 2, Monmouth.
Thursday, August 5, Gloucester and City.

WESTERN.

Platt and Martin, BB.
Monday, July 12, Devizes.
Thursday, July 15, Winchester.
Wednesday, July 21, Dorchester.
Saturday, July 24, Exeter and City.
Friday, July 30, Bodmin.
Wednesday, August 4, Wells.
Tuesday, August 10, Bristol.

NORTH WALES.

Talfourd, J.
Saturday, July 17, Newtown.
Wednesday, July 21, Dolgelly.
Monday, July 26, Carnarvon.
Wednesday, July 28, Beaumaris.

Saturday, July 31, Ruthin.
Wednesday, August 4, Mold.
Saturday, August 7, Chester and City.

SOUTH WALES.

Crompton, J.
Friday, July 16, Cardiff.
Wednesday, July 21, Carmarthen.
Saturday, July 24, Haverfordwest and Town.
Wednesday, July 28, Cardigan.
Saturday, July 31, Brecon.
Wednesday, August 4, Prestelgn.
Saturday, August 7, Chester and City.

BARRISTERS CALLED.

Easter Term, 1852.

LINCOLN'S INN.

April 27.

Duncan Stewart, Esq.
Joseph Warren Dobbin, Esq.
May 5.

John Back, Esq.
Richard Ottaway Turner, Esq.
William John Potts, Esq.
Charles Lees, Esq.
Francis Ottiwell Adams, Esq.
J. B. Smith, Esq.
Augustus Arthur Vancittart, Esq.

INNER TEMPLE.

April 30.

Andrew Fairbairn, Esq., B.A.
John Henry Jenkinson, Esq., B.A.
James Sewell White, Esq., B.A.
Frederick George Adolphus Williams, Esq., B.A.
William Hardman, Esq., B.A.
Henry M'Niven, Esq., M.A.
Alfred Henry Pechell, Esq., B.A.
Thomas Francis William Walker, Esq.
Joseph Sharpe, Esq., S. C. L.
Salisbury Baxendale, Esq., B.A.
John Donald Campbell, Esq., B.A.
Hon. George Edwin Lascelles.
Rowland Jones Bateman, Esq.
Francis Morgan Nichols, Esq., B.A.
Charles Gregory Wade, Esq., B.A.

May 4.

Thomas Jennings White, Esq., B.A.
Julian Pauncefote, Esq.

MIDDLE TEMPLE.

April 17.

Edmund Burke Wood, Esq.
Richard Denny Urling, Esq.
Arthur Thomas Godfrey, Esq.

May 6.

Henry Hall Dixon, Esq.
William Tankerville Chamberlayne, Esq.
Frederick Stallard, Esq.
Edgar John Meynell, Esq.
George Summers Griffiths, Esq.
Lucian William Cuffe, Esq.
Horatio Lloyd, Esq.

GRAY'S INN.

April 21.

Newman Ward, Esq.

NOTES OF THE WEEK.

NEW MEMBER OF PARLIAMENT.

The Right Honourable William Drogo Montagu, commonly called *Viscount Mandeville*, for the County of Huntingdon, in the room of George Thornhill, Esq., deceased.

LAW PROMOTIONS.

The Queen has been pleased to direct Letters Patent to be passed under the Great Seal, granting the dignity of a Baronet of the United Kingdom of Great Britain and Ireland, unto *Archibald Alison*, Esq., Advocate, Sheriff of the County of Lanark, and to the heirs male of his body lawfully begotten.—From the *London Gazette* of June 11.

John George Phillimore, Esq., Q. C., has been elected by the Council of the Inns of Court, to the Readership of Constitutional Law and Legal History.

William Henry Willes, Esq., has been appointed to the Readership of Common Law.

Richard Jebb, Esq., barrister-at-law, of Lincoln's Inn, has been appointed Chairman of the Metropolitan Commissioners of Sewers.

His Grace the Chancellor of the University of Oxford has been pleased to nominate and appoint under his letters patent (June 15) *Rosdell Palmer*, Esq., M. A., some time Fellow of Magdalen College, Q. C., to be Deputy High Steward of the University on the death of the Hon. John Chetwynd Talbot, M. A.

RECENT DECISIONS IN THE SUPERIOR COURTS,
AND SHORT NOTES OF CASES.

Lord Chancellor.

In re Atkinson's Trust. June 9, 1852.

INSOLVENT.—PRIORITY OF ASSIGNEE OVER PURCHASER FOR VALUE.—NOTICE TO TRUSTEES.—LACHES.

Held, (dismissing with costs an appeal from Vice-Chancellor Knight Bruce) that the assignee of an insolvent, under the 7 Geo. 4, c. 57, s. 11, was not entitled in priority to a purchaser for value of a reversion who had given notice of such purchase to the trustee, and which the assignee had not done.

This was an appeal from Vice-Chancellor Knight Bruce (reported 42 L. O. 363). It appeared that an insolvent was entitled under the will of Agnes Atkinson to a share in a sum of 700*l.*, upon the decease of the tenant for life, and that this interest was not inserted in the schedule to his petition, upon his becoming insolvent circumstances in April, 1830, or in 1834. He, however, sold his reversion in Jan. 1835, for a valuable consideration, the purchaser giving notice thereof to the trustee. The Vice-Chancellor having decided against the claim of the assignee, this appeal was presented.

By the 7 Geo. 4, c. 57, s. 11, it is enacted, that "such prisoner shall, at the time of subscribing the said petition, duly execute a conveyance and assignment to the provisional assignee of the said Court, in such form as is to this act annexed, of all the estate, right, title, interest, and trust of such prisoner in and to all the real and personal estate and effects of such prisoner, both within this realm and abroad," "and of all future estate, right, title, interest, and trust of such prisoner, in or to any real and personal estate and effects within this realm or abroad which such prisoner may purchase, or which may revert, descend, be devised, or bequeathed, or come to him or her, before he or she shall become entitled to his or her final discharge in pursuance of this act, according to the adjudication made in that behalf."

And by s. 16, that "it shall and may be lawful for the provisional assignee of the said

Court to take possession himself, or by means of a messenger of the said Court, or other person or persons appointed by him, of all the real and personal estate and effects of every such prisoner as shall subscribe such petition and execute such conveyance and assignment as aforesaid; and if the said Court shall so order, to sell or otherwise dispose of such goods, chattels, and personal estate, or any part thereof, and of the real estate of such prisoner."

Follett and Osborne, in support, cited *Smith v. Smith*, 2 Cr. & Mees. 231; *Ex parte Knott*, 11 Ves. 609; *Ryall v. Rowles*, 1 Ves. S. 348.

The Lord Chancellor (without calling on *R. Palmer* and *Schomberg*, contra) said, the question as to what the assignee of the insolvent took appeared beyond all dispute. He took that which the insolvent himself had to give, and he took no more. The act directed the insolvent to assign his property, but the assignee took it as liable to the general equities administered in this Court. It was clearly settled that the man who had been prompt in availing himself of his rights, and who had taken the best care of his own interests, was entitled to priority over one who had been indolent or neglectful: *Warburton v. Loveless*, 3 Dow & Cl. 480. The purchaser in the present case stated he knew nothing of the insolvency at the time of the purchase, and that he gave immediate notice to the trustee. Assignees under the Insolvent Act should therefore be more diligent in their inquiries with respect to the property and rights of insolvents, as it was impossible they could be concealed if proper inquiries were made among their families and friends. The appeal would therefore be dismissed, with costs.

June 9.—*Monckton v. Attorney-General*—Injunction granted to restrain proceedings by appellants on petition of Attorney-General, and motion refused to set aside order of the late Master of the Rolls, and to reverse or re-hear order of Lord Chancellor Cottenham.

— 9.—*In re Southampton Charities*—Stand

over for arrangement as to appointment of new trustees.

June 9.—*Seagrove v. Pope*—Order for rehearing.

— 9.—*Emmett v. Emmett*—Bill dismissed with costs.

— 9.—*In re Bristol Charities*—Arrangement come to.

— 12.—*In re Fawcett's Patent*—Reference back to the Master.

— 12.—*Attorney-General v. Mayor, &c., of Exeter*—Petition dismissed without costs.

— 12.—*In re Ward*—Stand over.

— 12.—*In re Norton's Trust*—Order for appointment of new trustees.

Lords Justices.

In re Gedye. June 7, 1852.

SOLICITOR.—TAXATION OF BILLS OF COSTS.—SPECIAL CIRCUMSTANCES.—WANT OF SIGNATURE.—POSSESSION OF PAPERS IN SUIT.

Held, *dismissing with costs an appeal from the Master of the Rolls, that, inasmuch as under the circumstances of the case there was a sufficient delivery of unsigned bills of costs more than 12 months before a common order to tax had been obtained, the fact of the bills being unsigned and that the solicitor had possession of the papers in the suit, were not "special circumstances" to entitle the executors of the client to a special order for the taxation of the bills.*

THIS was an appeal from the decision of the Master of the Rolls (reported 14 Beav. 86), dismissing with costs a petition for the taxation of five bills of costs for business transacted for the plaintiffs in the suit of *Toulmin v. Copland*. It appeared a Mr. Toulmin had acted as solicitor to the plaintiffs until Jan. 1844, when he retired from business, and was succeeded by Mr. Gedye, who, before Aug. 1849, delivered to him as agent to Mrs. Toulmin, his bill of costs. Upon her death in November, 1850, her executors obtained an order as of course for the taxation of the bills, but the order was discharged in January 29, 1851, by the late Master of the Rolls, on the ground that the bills had been delivered more than 12 months, and in February, 1851, the present petition was thereupon presented, alleging, as "special circumstances," that the bills were unsigned, items of overcharge, and that the solicitor had possession of the papers in the suit.

Roll and Freeking in support of the appeal; *R. Palmer and Welford*, contra, were not called on.

Lords Justices said, that the appeal must be dismissed with costs.

June 9. — *Moorhouse v. Colein* — Motion granted for leave to Mr. Lord to appear on hearing of appeal herein.

— 9.—*Holliday v. Overton*—Part heard.

— 9, 10.—*Ex parte Rufford and another, in re Rufford*—Appeal from Commissioner refusing certificate dismissed, but, on assignees and creditors assenting, protection granted.

June 10.—*Little v. Newport Abergavenny and Hereford Railway Company*—Part heard.

— 11.—*In re Burton*—Order for discharge of committee of lunatic, and on consent of heir-at-law and next of kin, for the appointment of new committee without reference.

— 11.—*Ex parte Wilson, in re Wilson*—Stand over.

— 11.—*Whitworth v. Brogden*—Decree varied of Master of the Rolls, and reference to Master.

— 11, 12.—*Smith v. Mules*—Decree varied.

— 12.—*Southby v. Great Western Railway Company*—Order of Vice-Chancellor Turner discharged with consent.

— 12.—*Clowes v. Beck*—Perpetual injunction.

Master of the Rolls.

Zulueta v. Vinet. May 8, 1852.

ATTACHMENT FOR WANT OF ANSWER.—DEFENDANT RESIDENT OUT OF JURISDICTION.—TAKING BILL PRO CONFESSO.

Held, *that a defendant, who was resident in Cuba, could not be attached for not putting in an answer to a bill, and an attachment against him was accordingly discharged, with costs.*

A motion to take the bill pro confesso under the 77th and 78th Orders of May, 1845, was refused, but without costs, as it did not appear that the defendant had abandoned or refused to answer the bill, but had apparently been led into error as to the time allowed for putting in his answer.

THIS was a motion for the discharge, on the ground of irregularity, of a writ of attachment which had issued on April 17 last, against the defendant, Antonio Vinet, who was resident in the island of Cuba, for want of an answer to this bill which sought to establish a lien on certain consignments of copper ore and other merchandise, for advances by the plaintiffs. It appeared that the bill was filed in 1851, and that no answer had been put in within the further time obtained for the purpose, and that the attachment had issued upon substituted service on the defendant's solicitor of notice to answer within 14 days.

Lloyd, Willcock, and Bobington, in support, referred to *Boschetti v. Power*, 8 Beav. 180.

Roupell and Shadwell, contra.

The Master of the Rolls said, that the case cited at bar was decisive on the point, and that the attachment must be discharged, with costs.

A motion was thereupon made that the bill be taken *pro confesso* for want of an answer under the 77th and 78th Orders of May, 1845.¹

¹ Which direct, that "in cases where any defendant, either being or not being within the jurisdiction of the Court, does not put in his answer in due time after appearance entered by or for him, and the plaintiff is unable, with due diligence, to procure a writ of attachment or any subsequent process for want of answer

The Master of the Rolls (without calling on the other side) said, that the Court had a large discretion under the orders, but that it was necessary that the defendant had absconded to evade service of process, or had refused to answer the bill, and that as it was manifest the defendant in this case had not absconded, since he had never been in England, but had apparently been led into error as to the time within which he was to put in his answer, the motion to take the bill *pro confesso* would be refused, but without costs.

June 9.—*Crouch v. Hooper*—Cur. ad. vult.

— 9.—*Plenty v. West*—Cur. ad. vult.

— 10.—*Hartwell v. Colvin*—Order for petitioners to give security for costs and petition dismissed with costs.

— 10, 11, 12.—*Anderson v. Kemshead*—Cur. ad. vult.

— 12.—*Lockett v. Jacques*—Injunction granted.

— 12.—*Kerr v. Middlesex Hospital and others*—Exceptions disallowed to report without costs.

Vice-Chancellor Turner.

June 9.—*South Eastern Railway Company v. Knott*—Cur. ad. vult.

— 10.—*Goodchap v. Weaving and others*—Order by consent.

— 10.—*Lee v. Lee*—Claim dismissed with costs.

— 12.—*Hancock v. Moulton*—Stand over, with leave to bring action at law.

— 12.—*Simpson v. Great Northern and Ambergate, Nottingham and Boston and Eastern Junction Railway Company*—Part heard.

Vice-Chancellor Kindersley.

Fletcher v. Ramsden. June 1, 1852.

ADMINISTRATION SUIT. — DIOCESAN LETTERS OF ADMINISTRATION. — NEXT OF KIN.

In a suit for the administration of the estate

to be executed against such defendant by reason of his being out of the jurisdiction of the Court, or being concealed, or for any other cause, then such defendant is, for the purpose of enabling the plaintiff to obtain an order to take the bill *pro confesso*, to be deemed to have absconded to avoid or to have refused to obey the process of the Court."

And the 78th Order, that "the plaintiff is, upon the hearing of such motion, to satisfy the Court that such defendant ought under the provisions of Order 77 to be deemed to have absconded to avoid or to have refused to obey the process of the Court; and the Court being so satisfied, and the answer not being filed, may, if it so thinks fit, order the bill to be taken *pro confesso* against such defendant, either immediately or at such time or upon such further notice as under the circumstances of the case the Court may think proper."

of an intestate, a cestrian administration was taken out durante minori etate of the next of kin, and upon the next of kin coming of age, he obtained a prerogative grant of administration. An objection of the representative of the administrator, who had died, that it was necessary for a diocesan grant to be taken out, was overruled.

THIS bill was filed for the administration of the estate of Mary Fletcher, intestate.

Pole appeared on behalf of the representative of a deceased administrator of the intestate, and objected, that the next of kin upon coming of age should have obtained a cestrian grant of administration in which diocese the property was situate, instead of in the Prerogative Court of Canterbury. It appeared the deceased had taken out administration in the Consistory Court of Chester, *durante minori etate* of the next of kin.

Stuart, Follett, Craig, Toller, and Schryn appeared for the parties.

The Vice-Chancellor said, that if the original administrator were living, and his administration had expired, and a prerogative grant been obtained by the next of kin, it would be an answer to a bill for an account filed by the next of kin, that he had accounted to a Prerogative Court administration, and although at some future stage of the suit it might be necessary to obtain an administration in York as to some part of the property, that was no reason for saying the suit was defective as regarded the present proceedings, and the objection would therefore be overruled.

Marshall v. Scott. May 29, 1852.

BILL FOR SPECIFIC PERFORMANCE OF AGREEMENT. — SHORT CAUSE. — OBJECTION OF DEFENDANT'S COUNSEL.

The Court, upon the objection of the defendant's counsel to a bill for the specific performance of an agreement for a lease being set down for hearing as a short cause, directed it to go into the general paper.

MAKES took an objection to this case, which was a suit for the specific performance of an agreement for a lease, being heard as a short cause, and urged that the question for decision was one of importance, and would occupy considerable time.

Stuart and Shebbeare for the plaintiff.

The Vice-Chancellor said, that as the counsel for the defendant had asserted that the cause was not a short cause, it must be set down to be heard in its regular course, and it would therefore have to go into the general paper.

June 9.—*Bell v. Bell*—Judgment on fur. dire.

— 9, 10.—*Bodenham v. Hoskins*—Decree for plaintiff, with costs.

— 10.—*Soltas v. De Held*—Order to take bill *pro confesso* for perpetual injunction, with costs.

June 11.—*Hood v. Lord Bridport*—Order on petition for reference to the Master as to expenditure on estate for repairs.

— 12.—*Gibson v. Gibson*—Declaration that testator's widow was not put to her election as to dower under will.

— 12.—*Ex parte Dean and Chapter of Peterboro'*, in re Great Northern Railway Company—Leave to apply income of purchase-money for drainage purposes.

Vice-Chancellor Parker.

In re *Metropolitan Junction Railway Company, ex parte Markwell.* May 22, 1852.

WINDING-UP ACT.—CONTRIBUTORY.—PROVISIONAL COMMITTEE-MAN.—RESTRICTION AS TO LIABILITY.—ACCEPTANCE OF SHARES.

A landowner, through whose lands a railway was to pass, agreed to become a member of the provisional committee, upon an understanding he was not to be liable for any of the expenses incurred. He, however, afterwards accepted shares without renewing the stipulation as to his non-liability: Held, dismissing with costs an appeal from the Master, that a new contract had been created by such acceptance and that he was liable as a contributory.

THIS was an appeal from the decision of the Master placing the name of Mr. Markwell on the list of contributories to the above company. It appeared that the appellant was the owner of some lands through which the projected railway was to pass, and that he had become a member of the provisional committee upon an express understanding that he should not be liable for any of the expenses of the company, and that he had afterwards applied for and agreed to accept 200 shares, or any portion of them, subject to the provisions of the subscribers' agreement. It appeared that he had applied for a postponement of the time for the payment of the deposits thereon, but no subscribers' agreement had ever been executed, and his name had, at his request, been subsequently withdrawn from the committee.

Daniel and Eschburgh, in support, referred to *Ex parte Roberts*, 3 De G. & S. 205; 2 M'N. & G. 192.

Bacon and Selwyn, for the official manager, contra, cited *Upfill's case*, 2 H. of L. 674.

The Vice-Chancellor said, that the appellant by subsequently agreeing to take shares without at the same time repeating the stipulation that he was to be held free from all liability, had entered into a new relation with the company which brought upon him the liability attaching in *Upfill's case*, and the appeal must therefore be dismissed, with costs.

June 10, 11.—*Clay v. Bedford*—Part heard.

— 11.—*Culder v. Culder*—Reference to the Master as to sale of estate pending suit.

— 12.—*Hayes v. Beale and others*—Injunction refused—Costs to be costs in the cause.

Court of Queen's Bench.

Regina v. Inhabitants of St. Mary's, Islington.

April 22, 1852.

PEREMPTORY MANDAMUS.—MAKING RATE FOR RELIEF OF POOR.

A peremptory mandamus was granted on the vestrymen of a parish to assemble for the purpose of making a rate for the relief of the poor of a parish under the 5 Geo. 4, c. cxxv., where they had, at a former meeting upon the estimate being made, negatived a rate.

THIS was a motion for a mandamus on the vestrymen of the above parish to assemble in vestry for the purpose of estimating the sum required to be raised for the relief of the poor and for other expenses during the ensuing year, under the 5 Geo. 4, c. cxxv. It appeared that a meeting had been held on April 12 last, for the purpose, and that the estimate which had been prepared had been laid before the vestry and entered on the minutes, but that the rate had been negatived.

Pashley in support.

The Court directed the mandamus to issue, and said that as the matter was urgent it would be absolute in the first instance.

June 9.—*Regina v. Temple*—Reference back for re-statement of case.

— 9.—*Regina v. York and North Midland Railway Company*—Cur. ad. vult.

— 10.—In re ——— and others, *ex parte Grafton and another*—Rule nisi on attorneys for delivery up of shares pursuant to undertaking.

— 10.—*Robinson v. Jones*—Rule absolute to reduce damages.

— 10.—*Regina v. Lloyd*—On demurrer to mandamus, judgment for prosecutor.

— 10.—*Same v. Same*—Rule absolute for new trial of issue of fact upon prosecutor's paying costs.

— 11.—In re *Sundimans*—Rule for *habeas corpus* discharged, with costs.

— 11, 12.—*Bostock v. North Staffordshire Railway Company*—Rule absolute for review of taxation.

— 12.—*Arnott v. Holden*—Judgment for the plaintiff.

— 12.—*Commissioners of Kennet and Avon Navigation v. Witherington*—Judgment for the plaintiffs.

— 12.—*Regina v. South Wales Railway Company*—Rule enlarged.

— 12.—*Regina (ex parte Poor Law Board) v. Vestrymen of St. Pancras*—Rule absolute for restoration of master of workhouse to his office.

— 12.—*Regina v. Land Tax Commissioners*—Rule absolute for mandamus on defendants to make equal pound-rate.

— 12.—*Regina (ex parte Churchwardens of Bloughton) v. Ecclesiastical Commissioners*—Rule nisi for mandamus.

— 12.—*Regina v. Vicar and Churchwardens of Hammermith*—Rule discharged, with costs, for mandamus to convene vestry meeting.

— 12.—*Regina (ex parte Broome) v. Sill*—Rule nisi to discharge rule for certiorari.

June 12.—*Regina v. Saddlers' Company*—Rule nisi for mandamus.

— 15.—*Kirby v. Williamson*—Judgment for the appellants from the Hartlepool County Court, but without costs.

— 15.—*Shillibeer v. Shillibeer*—Appeal dismissed.

Queen's Bench Practice Court.

June 9.—*Ex parte Foster, in re Upton*—Rule absolute for habeas corpus to give up body of infant to his aunt and next of kin.

— 9.—*Regina v. Exeter and Crediton Railway Company*—Rule refused for mandamus on defendants to repair road.

— 10.—*Regina (ex parte Blackstone) v. Duffield*—Rule nisi for criminal information.

— 11.—*Regina (ex parte Slee) v. Sutton*—Rule refused for criminal information.

— 11.—*Ex parte Haylock*—Cur. ad. vult.

— 12.—*Clarke v. Guardians of the Poor of Cuckfield Union*—Rule discharged to enter a nonsuit.

— 12.—*In re Upton*—Rule enlarged.

— 12.—*Regina v. Birmingham and Oxford Junction Railway Company and others*—Rule nisi for mandamus on defendants to construct tunnel.

Common Pleas.

Hayes v. Keene. April 22, 1852.

WARRANT OF COMMITMENT UNDER COUNTY COURTS' ACT.—ACTION FOR ASSAULT AND FALSE IMPRISONMENT.

To an action in trespass for an assault and false imprisonment, the defendant in his plea set out a warrant of commitment, dated Sept. 18, 1851, of a County Court Judge for 10 days, on the plaintiff's default in the payment of an instalment, and which was executed on Dec. 16 following. The plaintiff replied, setting out the 113th rule under the 13 & 14 Vict. c. 61, limiting the continuing in force of warrants to three calendar months. The plaintiff was detained in custody until Dec. 22: Held, (giving judgment for the defendant on demurrer to this replication,) that the 113th rule merely required the warrant to be executed before the expiration of the three calendar months, and that the gaoler having received the warrant, was bound to keep the plaintiff in custody for the term mentioned therein.

THIS was a demurrer to the replication to the plea in this action which was brought in trespass for an assault and false imprisonment. The defendant in his plea set out a warrant of commitment for 10 days, or until he should be sooner discharged by due course of law, under the 9 & 10 Vict. c. 95, issued by the clerk of the Wandsworth County Court, dated 19th Sept., 1851, upon the plaintiff's default in paying an instalment directed in a plaint against him in that Court, and which was deli-

vered to the bailiff who arrested the plaintiff on Dec. 16, and he was detained in prison until Dec. 25. The plaintiff replied, setting out the 113th General Rule, framed under the 12 & 13 Vict. c. 61, which provided, that "warrants for commitment, whenever issued, shall bear date on the day on which the order for the commitment was made, and shall continue in force for three calendar months from such date, and no longer," and that he had been detained in custody after the expiration of the three calendar months.

CAANNELL, S. L., and T. D. BOENS, for the defendant, in support of the demurrer to this replication; Giffard, for the plaintiff, contra.

The Court said, that, construing the rule in its strictest sense, the gaoler was bound to keep the plaintiff for the term mentioned in the warrant, and the restriction only applied to its being executed within the three calendar months, and that the defendant was therefore entitled to judgment.

June 9.—*Shoubridge v. Clark*—On special case, judgment for defendant.

— 11.—*Lott v. Booth*—Rule nisi to reduce damages.

— 11.—*Wink v. Williams*—Rule discharged for new trial.

— 12.—*Dalton v. Midland Counties' Railway Company*—Rule discharged for interpleader rule.

— 12.—*Edwards and another v. Great Western Railway Company*—Rule absolute for review of taxation.

Court of Exchequer.

Dwyer v. Collins. April 30; May 8, 1852.

ACTION ON BILL OF EXCHANGE.—PRODUCTION BY PLAINTIFF'S ATTORNEY—PRIVILEGED COMMUNICATION.—NOTICE TO PRODUCE.

On the trial of an action on a bill of exchange, to which the defence set up was that it had been accepted in payment of a gambling transaction, and was illegal, the plaintiff's attorney was called for the defendant, and was asked whether he had the bill in Court, and on his answering in the affirmative, being called on to produce it, he refused on the ground of notice to produce not having been given; and secondary evidence of its contents was tendered and admitted. Held, discharging a rule for a new trial, that the attorney was not privileged from stating where the bill was, and that upon its appearing to be in Court, no notice to produce was necessary.

THIS was a rule nisi to set aside the verdict for the defendant, and for a new trial in this action, which was brought on a bill of exchange, and to which the plea set up the defence, that it had been accepted by the defendant in payment of a gambling debt, and was therefore illegal. On the trial before Lord Chief Baron Pollock, the plaintiff's attorney was called for

the defendant, and upon an objection being overruled to the question, on the ground of professional privilege, he admitted he had it in his possession, and, upon his declining to produce it, on the ground that no notice to produce had been given, secondary evidence of the contents of the bill was admitted. The defendant having thereupon obtained a verdict, this rule had been granted.

Hawkins now showed cause; *Udall* in support.

Cur. ad. vult.

The Court said, it was clear that the mere possession of the bill was not a fact, the disclosure of which by the attorney would amount to a breach of professional confidence, and that the question had been well allowed. As to the second point, the principle which regulated the necessity for giving a notice to produce was, merely to give the party possessed of the document so required to be produced notice of the wish to have it in Court, in order to give the best evidence of its contents by the document itself, and that when it was shown to be in Court, a demand on the party in possession was sufficient to warrant the opposite party in giving secondary evidence of its contents if it were withheld. The rule would therefore be discharged.

June 9.—*Pearson, clerk, v. Beck*—*Cur. ad. vult.*

— 10.—*Ponting v. Watson*—Rule refused to arrest judgment, and rule for new trial discharged on plaintiff consenting to enter a *nolle prosequi* on 2nd and 3rd counts.

— 10.—*Kaye v. Seaton*—Rule absolute for new trial, on payment by defendant of debt and costs into Court.

— 11.—*Cook v. Batty*—Rule absolute for new trial on payment of costs.

— 11.—*Butler v. Aldon*—*Stat processus* or rule absolute for new trial.

June 12.—*Whyman v. Argent*—Rule absolute for new trial.

Exchequer Chamber.

Regina v. Ion. May 29, 1852.

INDICTMENT FOR UTTERING FORGED RECEIPTS.—WHAT SUFFICIENT UTTERING.

The prisoner had, on being referred to by a person desirous of borrowing money from the prosecutor, produced certain receipts for poor-rates, and thereby induced the prosecutor to grant the loan: Held, that this was a sufficient uttering under the 11 Geo. 4, and 1 W. 4, c. 66, to support an indictment for uttering forged receipts, and a conviction thereon was accordingly affirmed.

This was an indictment for uttering forged receipts for money, and on the trial before the Recorder at the Central Criminal Court, it appeared that the prisoner, upon being referred to by a person desirous of borrowing money from the prosecutor, had placed in the prosecutor's hands three receipts for poor-rates for the fraudulent purpose of inducing him to grant the loan, but which proved to have been forged.

Metcalf, for the prisoner, contended that this was not an uttering within the 11 Geo. 4 and 1 W. 4, c. 66.

Perry for the prosecution.

The Court (after taking time to consider) said, that as the prisoner had placed the receipts in the hands of the prosecutor to induce him to advance money to another, it was an uttering within the statute, and the conviction was accordingly affirmed.

June 14.—*Regina v. Moore*—Conviction affirmed.

— 14.—*Tepley and another v. Taylor*—Judgment of the Court of Queen's Bench reversed.

— 15.—*Ostler v. Cook and others*—Judgment affirmed of the Court of Queen's Bench.

— 15.—*Heath v. Unwin*—*Cur. ad. vult.*

ANALYTICAL DIGEST OF CASES,

REPORTED IN ALL THE COURTS.

Courts of Equity.

[For the previous Sections of the Digest in this Volume, see

Privy Council: Appeals, p. 17.

House of Lords: Appeals, p. 38.

Courts of Equity:

Construction of Statutes, p. 104.

Law of Attorneys and Solicitors, p. 125.]

CONTRIBUTORIES under the WINDING-UP ACT.

ABORTIVE COMPANY.

1. *Liability of provisional committee to contribute inter se.*—*Liability as contributories to company.*—Where an abortive railway company has been ordered to be wound up, the

provisional committee for forming such company is not identical with the company itself. The object of the provisional committee was only to procure the formation of the company; and although the members of the provisional committee may be liable to contribute *inter se*, they are not, as such, contributories to the company directed to be wound up. *In re Direct Easter, Plymouth, and Devonport Railway Company, ex parte Bealy*, 3 De G. & S. 224.

2. *Effect of Registration or Winding-up Acts on rights or liabilities of promoters.*—The rights and liabilities of the persons concerned in an attempt to form a joint-stock company which fails, are not affected by the Registration or the Winding-up Acts. *In re Great North*

of England, Yorkshire, and Glasgow Union Railway Company, *ex parte Carrick*, 1 Sim. N. S. 508.

ALLOTTEE.

1. *Ground for removal of name in consequence of unauthorised advertisement of names of provisional directors.*—*Semble*, that the circumstances of some persons being advertised as provisional directors without their consent, is not sufficient ground (no fraudulent intent being proved) for removing from the list of contributories an allottee who was induced by the advertisement to apply for shares. *In re Direct Exeter, Plymouth, and Devonport Railway Company, ex parte Mathew*, 3 De G. & S. 234.

2. *Liability to creditors.*—*Personal contract or by his authority.*—In determining that the name of a party is to be placed on the list of contributories of a projected company, it must be shown either that he is liable to the creditors of the company by having personally contracted with them or given his authority to those who contracted with them, or that he is bound to indemnify persons liable to creditors, this obligation resulting either from an express contract or from a contract implied from his conduct. *In re Direct Exeter, Plymouth, and Devonport Railway Company, ex parte Bealey*, 3 M'N. & G. 287.

CALL.

See *Costs*, 1; *Debts*.

COSTS.

1. *No order for call for, until liability ascertained in respect of which call made.*—No order ought to be made for a call upon the contributories of a provisionally registered company, on account of the costs of winding up the company, until the liabilities of the contributories have been ascertained, or at least till the Master has ascertained the liability of the contributories to the costs in respect of which the call is made. *In re Direct Birmingham, Oxford, Reading, and Brighton Railway Company, ex parte Hunter*, 1 Sim. N. S. 435.

2. *Non-liability in proportion to number of shares.*—The contributories of a provisionally registered company are not liable, in proportion to the number of their shares, to the costs of winding-up the company: *Semble*. *In re Direct Birmingham, Oxford, Reading, and Brighton Railway Company, ex parte Hunter*, 1 Sim. N. S. 435.

CREDITORS' ASSIGNEE.

Of bankrupt-shareholder.—*Signature of accounts of official assignee debiting payment of calls.*—The official assignee of a bankrupt-shareholder of a company paid, out of the bankrupt's estate, calls becoming due on the shares after the bankruptcy, and the creditors' assignees, in the usual course of business, signed memoranda, vouching the accuracy of the official assignee's accounts, containing entries of the payments of the calls: *Held*, that the surviving creditors' assignee had not thereby rendered himself liable to be placed on the

list of contributories, in his own right, as member by survivorship. *In re German Mining Company, ex parte Stone*, 3 De G. & S. 220.

DEBTS.

No call for, to be made until liability ascertained.—The Master ought not to make a call on any contributory, until he has ascertained that the contributory is liable to pay the debt or debts in respect of which the call is made. *In re Direct Birmingham, Oxford, Reading, and Brighton Railway Company, ex parte Uppill*, 1 Sim. N. S. 395.

EFFECT OF ACT.

To create new liabilities.—*Quære*, whether the Winding-up Acts, 1848 and 1849, do not go beyond devising modes of enforcing liabilities previously existing, and have not created new liabilities. *In re Vale of Nenth and South Wales Brewery Company, ex parte Walters*, 3 De G. & S. 244.

EXECUTOR.

Deceased proprietors.—*Liability until new personal liability created.*—By a deed of settlement of a public company, it was provided, that the company was to continue 40 years:—"that the shares of deceased proprietors should belong to their personal representatives;" but that executors should never be deemed proprietors until they should be duly admitted proprietors, on the approval by the directors, and had executed the deed, &c., "and then, but not before," they were to become proprietors, and entitled to receive the dividends: *Held*, that upon the death of a proprietor, his estate continued liable, until a new personal liability had been created pursuant to the deed. *In re Northern Coal Mining Company, ex parte Blakeley*, 13 Beav. 133.

EXECUTRIX.

1. *Of shareholder.*—*Limit of liability under Joint-Stock Companies' Banking Act.*—*Partners contributing inter se.*—A. B., the proprietor of shares in a joint-stock banking company, died: his executrix produced the probate of his will, and for more than three years received the dividends which accrued on the shares, giving receipts for the same as executrix. By the deed of settlement of the company it was provided, that until certain acts were done, constituting the executor of a deceased member or a purchaser of the deceased member's shares a partner in the company, the estate of the deceased member should remain liable: *Held*, on winding up the company, that, in the absence of any proof that the executrix had done any acts constituting her a member of the company, the estate of the deceased partner was liable to contribute, and that the name of the executrix ought to be placed on the list of contributories in her representative character.

Held, also, that the 13th section of the Joint-Stock Banking Companies' Act, 7 Geo. 4, c. 46, limiting the liability of members of banking companies to three years after ceasing to be members, has no effect in varying the liability to contribute between partners themselves, and

therefore did not apply to the case. *In re North of England Joint-Stock Banking Company, ex parte Gouthwaite*, 3 M.N. & G. 187.

2. *Receipt of profits by.—Evidence of contract to become contributory.*—The executrix of a deceased shareholder in a joint-stock banking company received dividends on shares vested in him from his death in 1842 till 1846, when the affairs of the company became embarrassed; but she was not required by the directors to execute the deed of settlement according to the provisions of that document, nor did she execute it: *Held*, first, that as she participated in the profits, it was unreasonable to attribute to her and the directors an intention that she was not to be liable to contribute to the losses in some manner.

Secondly, that the receipt of the dividends was sufficient evidence that she had contracted with the directors to be a contributory.

Thirdly, that the directors were competent to make such contract; *sed quere*, whether she should be a contributory personally or as executrix. *In re North of England Joint-Stock Banking Company, ex parte Gouthwaite*, 3 De G. & S. 258.

3. *And devise of shareholder.—When personal estate fully administered.—Husband and wife.*—A shareholder in a joint-stock company bequeathed his personal estate to his wife for life, and, after her death, to his daughter absolutely, (subject to certain payments,) and he appointed his wife and daughter his executrices, and devised to them real estate.

The widow received dividends on the shares, and died; and afterwards, on the company being wound up under the Winding-up Acts, the daughter and her husband were placed on the list of contributories, in the right of the daughter as executrix of her father: *Held*,

First, that a call was properly made upon the daughter and her husband, payable out of the testator's personal assets, whether the conduct of the executrices, in suffering their testator's assets to remain in the company, was a breach of trust or not.

Secondly, on it appearing that the personal assets had been fully administered, *held*, that she and her husband could not be put on the list in respect of her being devisee. *In re St. George's Steam Packet Company, ex parte Hamer*, 3 De G. & S. 279.

And see *Reference back to the Master*, 1.

HOLDER OF SHARES.

Executing deed at request of managing director who was coventantee.—The managing director of a company having had 150 shares awarded to him by the provisional directors, in consideration of his services, and being the coventantee in the deed of settlement, his brother, at his request, executed the deed as the holder of the shares; and several other shareholders executed it after him. Afterwards, the directors rescinded the resolution by which they had awarded the shares, and the managing director delivered up the certificates for the shares to them. The Master excluded the

brother's name from the list of contributories; but the Court ordered it to be restored. *In re Independent Assurance Company, ex parte Holt*, 1 Sim. N. S. 389.

HUSBAND.

Liability of, for wife's shares.—Membership.—Compliance with deed of settlement.—The deed of settlement of a company prescribed certain preliminaries, which were to be observed for the purpose of making the husband of a female shareholder a proprietor in the company: *Held*, that a husband who had not complied with these requirements, was liable in respect of losses incurred during the coverture, but not liable in respect of any incurred before the inception or after the determination of the coverture, notwithstanding expressions used by him, in corresponding with the secretary of the company, alluding to the shares as his. *In re Vale of Neath Brewery Co., ex parte Kluht*, 3 De G. & S. 210. And see *Executrix*, 3.

ISSUE AT LAW.

1. *As to bona fides of allotment.—Application for shares.—Delay in making allotment.*—An application for shares in a provisionally registered projected company was made on October 20th, 1845. No answer was returned until December 15th, when a letter of allotment was sent to the applicant, who took no notice of it. The circumstances of the projected company had considerably changed in the interval. On an appeal from the decision of the Master, placing the applicant on the list of contributories, an issue was directed to try whether the allotment was made *bona fide*; and a verdict having been found in the negative, the applicant's name was removed from the list. *In re Direct Exeter, Plymouth, and Devonport Railway Company, ex parte Mathew*, 3 De G. & S. 234.

2. *As to acceptance of shares.—Reservation of shares.*—The secretary of a company wrote to A., a member of the provisional committee, informing him that the managing committee had apportioned 100 shares to each member of the provisional committee, and requested to be informed, on or before a certain day, whether A. would take that or any less number of shares, otherwise the committee would consider that he declined taking any. A., in answer, requested that the 100 shares might be reserved for him. The Court directed an issue to try whether A. had accepted the shares. *In re Direct Birmingham, Oxford, Reading, and Brighton Railway Company, ex parte Onions*, 1 Sim. N. S. 394.

PROVISIONAL COMMITTEE-MAN.

1. *Liability restricted to date of acceptance of shares.*—A. had been a member of the provisional committee, and had accepted shares in a company which was ordered to be wound up. The Master placed A.'s name on the list as a contributory to the expenses of the committee incurred between the 14th October, 1845, the day on which he accepted the shares, and the 30th of November, 1845, on or before which

day the company ought, according to the standing orders, to have deposited their plans, &c., in order to obtain an act of incorporation in the then next session. But they did not do so; nor did they after that day, take any steps towards the establishment of the company.

Held, that *A.* was liable to contribute to the expenses incurred between the 14th of October and 30th November, 1845, both inclusive; but was not liable to contribute to the expenses incurred before the former day or after the latter. *In re Direct Birmingham, Oxford, Reading, and Brighton Railway Company, ex parte Bright*, 1 Sim. N. S. 602.

Case cited in the judgment: *Uphill's case*, 2 H. of L. 674.

2. "*Ornamental member.*"—*A.* consented to his name being placed on the list of the provisional committee of a company, as an *ornamental member*, and to take such number of shares in the company as might be allotted to him. Afterwards the managing committee allotted him 25 shares. The letter of allotment stated that, on payment of the deposits, the receipts must be exchanged for a certificate of scrip, which would be granted on the due execution of the subscribers' agreement and parliamentary contract, *without which no person would be recognised as a subscriber, or be entitled to any interest in the undertaking.* Those instruments were never engrossed; and, consequently, *A.* never executed them. He, however, paid the deposits on the 25 shares, but not until after the undertaking had been abandoned.

The Master struck *A.'s* name off the list of contributories; but the Court ordered it to be restored. *In re Direct Shrewsbury and Leicester Railway Company, ex parte Brittain*, 1 Sim. N. S. 281.

Case cited in the judgment: *Uphill's case*, 2 House of L. 674.

3. *And member of executive committee.*—Evidence as to expenses incurred by direction and that they remained unpaid.—*Carrick* had been a member of the provisional committee and of the executive committee of a provisionally registered company, and a party to resolutions for the appointment of a surveyor, &c., and had consented to take a share or shares; and a letter of allotment of a certain number was sent to him. He had also contributed to a fund raised, after the abandonment of the undertaking, for defraying the expenses incurred by the company. On these grounds, the Master placed his name on the list of contributories. But, as there was no distinct evidence of his acceptance of shares, or that expense had been incurred in consequence of the resolutions, or, if any expense had been incurred, that it remained unliquidated, or had been liquidated by those who were entitled to call upon him for contribution, the Court ordered his name to be struck off the list, but gave the official manager liberty to apply to the Master to restore it, if he could show that the debts remaining to be discharged were

debts for which *Carrick* was liable. *In re Great North of England, Yorkshire, and Glasgow Union Railway Company, ex parte Carrick*, 1 Sim. N. S. 505.

4. *Withdrawal of name.*—*Attending subsequent meeting.*—*Payment under protest of contribution towards expenses.*—The appellant had attended a meeting of the provisional committee of a provisionally registered railway company, but took no part in its proceedings, and expressly desired that his name might not be inserted in the books of the company. Afterwards, upon threats of his name being given up to the creditors of the company, in order that he might be sued for its debts, he paid, under protest, two sums of 15*l.* and 50*l.* demanded from him to the credit of the company, as his proportion of certain contributions required from all the members of the provisional committee: *Held*, that the appellant was not a contributory to the company under the Winding-up Acts. *In re Direct Exeter, Plymouth, and Devonport Railway Company, ex parte Hall*, 3 De G. & S. 214.

5. *Liability of.*—*Authority to contract.*—The mere fact of a party having consented to his name being added to the provisional committee of a projected company does not confer an authority on the committee to contract on his credit, and therefore gives rise to no liability to creditors or to indemnify the committee. *In re Direct Exeter, Plymouth, and Devonport Railway Company, ex parte Besley*, 3 M. & G. 287.

6. *Contribution to avoid action.*—*Attendance at meeting of committee.*—*Held*, that the circumstance of a provisional committee-man never having attended a meeting of the committee was not sufficient to distinguish his case from *Besley's*, to which it was in other respects similar. *In re Direct Exeter, Plymouth, and Devonport Railway Company, ex parte Hole*, 3 De G. & S. 241.

7. *Withdrawal of name.*—*Payment of moneys in ignorance of non-liability.*—*Contributory.*—*A. B.* consented to become one of the provisional committee of a projected company, and was nominated as such accordingly. He shortly afterwards, however, desired his name to be withdrawn from the committee, and declined to take any shares in the company. This request was acceded to, but, through the neglect of the secretary, no communication was made to *A. B.* on the subject, and his name in fact continued on the list of the provisional committee. It being found impracticable to establish the proposed company, the project was ultimately abandoned. Up to this time, *A. B.* had not attended any meetings or done any other act than above-mentioned: subsequently, however, to the abandonment of the project, he attended meetings of the committee and paid certain sums in order to free himself from liability: *Held*, that the acts done by *A. B.* previously to the abandonment of the scheme neither rendered him personally liable to the creditors of the company nor liable to indemnify the other members of the committee,

and that no liability arose in either of these respects in consequence of the acts done subsequently; inasmuch as they appeared to be done in ignorance of the fact that his application to have his name withdrawn from the provisional committee had been acceded to. *In re Direct Exeter, Plymouth, and Devonport Railway Company, ex parte Besley*, 3 M'N. & G. 267.

Cases cited in the judgment; *Reynell v. Lewis*; *Wyld v. Hopkins*, 15 M. & W. 517; *Ex parte Cottle*, 2 M'N. & G. 185; *Norris v. Cottle*, 2 H. of L. 647; *Ex parte Roberts*, 2 M'N. & G. 196.

8. *Liability as a member. — Contribution under fear of action. — Refusal to accept shares and withdrawal from committee.*—*B.* was placed, at his own request, upon the list of a provisional committee of a railway company, which was provisionally registered, on an assurance that he would not incur any responsibility, nor be bound to take shares. A managing committee was appointed at a meeting of the provisional committee, at which *B.* was not present. The secretary, subsequently, in pursuance of a resolution of the managing committee, offered shares to *B.*, which, by letter, he declined to take, requesting that his name might be withdrawn from the provisional committee. The committee by resolution, agreed to comply with this request, and *B.*'s name did not subsequently appear in the published prospectus. The projected committee was not formed. Heavy liabilities were incurred by the managing committee; and at three meetings of the provisional committee subsequently held, which were attended by *B.*, it was resolved that three contributions, amounting together to 115*l.*, should be paid by each of the provisional committee-men. In compliance with this resolution, *B.* made three payments, amounting to 115*l.* An order was made for winding up the railway company under the Winding-up Acts: *Held*, that even if *B.* continued to be a provisional committee-man, he was not, therefore, and merely as such, a member of the company ordered to be wound up; and his name was removed from the list of contributories. *In re Direct Exeter, Plymouth, and Devonport Railway Company, ex parte Besley*, 3 De G. & S. 224.

And see *Abortive Company*, 1.

QUALIFIED CONSENT.

To become a member. — Subject to his approval of plans.—A person who, being applied to to become a member of a provisional committee of a provisionally registered railway company, consented by a letter with a postscript, to the effect that the acceptance must be taken subject to his approval of the plans, and that he should be held free from all liability. He afterwards attended a meeting at which the managing committee was appointed: *Held*, that the qualification contained in the postscript was an integral part of the acceptance, and that he was not liable to be placed on the list of contributories. *In re Direct Exeter, Plymouth, and*

Devonport Railway Company, ex parte Roberts, 3 De G. & S. 205.

REFERENCE BACK TO MASTER.

1. *Alternative form of order for placing name on list, either in own right or in representative character.*—The Master having struck out the name of the executrix of a deceased member from the list of contributories, on the ground that the 13th section of the Joint-Stock Companies' Winding-up Act applied to the case, the Vice-Chancellor Knight Bruce, being of a different opinion, made an order referring it back to the Master to review his decision, with a declaration of opinion that the executrix ought to be included in the list, either in her own or in her representative character: *Held*, on appeal, by the Lord Chancellor, that the alternative form of this order was correct. *In re North of England Joint-Stock Banking Company, ex parte Gouthwaite*, 3 M'N. & G. 187.

2. *Certificate including name on list in respect of expenditure which he might be proved to have incurred.*—The Master certified that he had included *A.*'s name in the list of contributories, not as a shareholder, but as a contributory in respect of any expenditure which he might be proved to have incurred.

The Court held the certificate to be informal, and directed the Master to review his certificate, with liberty to either party to adduce further evidence. *In re Shrewsbury and Leicester Direct Railway Company, ex parte Riddell*, 1 Sim. N. S. 402.

RETIRED DIRECTOR.

1. *Advertisement of dissolution of partnership after execution of deed of settlement.*—*B.* was one of the projectors of a banking company, and concurred in issuing a prospectus containing regulations, one of which was, that a deed of settlement should be prepared. Several meetings of the proposed directors took place, at which *B.* took the chair, and at which the terms of the deed of settlement were discussed; but before the deed was executed by any one, disputes arose between *B.* and other directors, and it was agreed that the former should retire and cease to be a member of the company. The deed was afterwards executed, at various times, by other members, and contained a clause whereby the parties thereto ratified all acts, contracts, deeds, matters and things, up to the time of its execution, done, executed, and performed by the directors. After the execution of the deed, the dissolution of partnership between *B.* and the company was advertised. On the company being wound up several years afterwards: *Held*, that the ex-chairman was not properly included in the list of contributories. *In re St. Marylebone Joint-Stock Banking Company, ex parte Busk*, 3 De G. & S. 267.

2. *Liability of. — Incapacity of directors to cancel shares.*—The deed of settlement of a joint-stock banking company contained a stipulation, that in all cases not provided for by that or any supplemental deed of settlement, the directors might act in such manner as to

promote the interests and welfare of the company: *Held*, that this clause did not enable the directors to cancel the shares of a retiring director, so as to exempt him from responsibility; but that, on the company being wound up upwards of 10 years after such a cancellation, the retiring director was properly placed upon the list of contributories. *In re St. Marylebone Joint-Stock Banking Company, ex parte Stanhope*, 3 De G. & S. 198.

TRANSFER OF SHARES.

1. *When not perfected in accordance with deed of settlement.—Agreement to become shareholder and acceptance by directors.*—Twenty-seven shares in a joint-stock trading company were assigned by two shareholders to a purchaser in 1842. Notice thereof was given to the secretary in 1843, and he made an entry of the transfers in pencil in the share-ledger of the company. The company was dissolved in May, 1847, and in August following the secretary perfected in ink the entry which he had so made in pencil; but other formalities required by the company's deed of settlement to render transfers of shares valid were not complied with. The purchaser, by letter, in 1843, requested that the dividend on his shares should be paid to a specified individual; and a dividend, which was the only dividend then payable, was paid accordingly. Notice of meetings and of other proceedings usually sent to shareholders were regularly sent to the purchaser; and in reply to one of such notices in 1845, the purchaser wrote to the secretary concurring in a proposal then made to sell the company's place of business, and therewith to pay its liabilities. That letter was recorded in the minutes of the meeting, at which a resolution to the proposed effect was come to: *Held*, that there was a complete agreement on the part of the purchaser to become a shareholder, and an acceptance of him, as such, by persons having the management of the affairs of the company, who were competent to act as they did; and that the purchaser's name was properly placed upon the list of contributories. *In re Vale of Neath and South Wales Brewery Company, ex parte Gordon*, 3 De G. & S. 249.

2. *Liability to contribute between transferrors inter se.—Where no co-transferrer insists thereon.*—Where, by a deed of settlement of a company, the responsibility of transferrors of shares is, as between them and the company, determined by the transfer, their possible liability to contribute *inter se*, in the event of demands of creditors being enforced against any of them, is not sufficient ground for placing a transferrer upon the list of contributories, in a case where no transferrer is active in making or supporting an application for that purpose. *In re Royal Bank of Australia, ex parte Sutton*, 3 De G. & S. 262.

3. *Unauthorized acceptance of re-transfer of shares by directors.*—Shares in a joint-stock company were transferred by the directors to *W.*, a purchaser, irregularly, by entries in the company's book, and not by allotment or deed,

as required by the company's deed of settlement. In respect of this transfer as a qualification, *W.* became a director. At the expiration of half a year, and in October, 1841, he became desirous to retire from being either director or shareholder; and at a meeting of the directors with *W.*, it was agreed that the shares should be taken back; and he was repaid the value of the shares by a promissory note, signed, as for the company, by one director in favour of another, and indorsed to *W.* The note was ultimately paid, but no transfer was regularly made or executed; *W.* thenceforth ceased to act as director and to be treated as a shareholder: *Held*, that the directors had no power to accept the shares back from *W.*, and that *W.* could not be presumed to be ignorant that they were without that power, and that his name was properly on the list of contributories. *In re Vale of Neath and South Wales Brewery Company, ex parte Walters*, 3 De G. & S. 244.

Case cited in the judgment: *Ex parte Morgan*, 1 De G. & S. 750; 1 M.N. & G. 225.
And see *Vendor*.

VENDOR.

1. *Liability of.—Imperfect transfer of shares.*—The deed of settlement of a joint-stock company provided, that, until a deed of transfer of any shares should be executed by the vendor and the purchaser, and should be delivered to the clerk of the company, and a memorial of it should have been made, the purchaser should have no part in the profits. A father purchased shares for his son without the privity of the latter, and the vendor was permitted by the company to execute a transfer to the son in the books of the company. The son's name was thereupon registered as a shareholder, but he never executed the instrument of transfer, received any dividend, or assented to the transaction, but always repudiated it. On the company being wound up eight years afterwards: *Held*, that the estate of the vendor was liable in respect of the shares. *In re St. George's Steam Packet Company, ex parte Hennessey*, 3 De G. & S. 191.

2. *Liability after sale to company.—Laches by company.*—By the deed of settlement of a public company, the directors had a power of pre-emption of shares, at a price to be ascertained from the last sales appearing in "the transfer register book," and then, "but not before," all future liabilities of the vendors were to cease. In 1840, the directors purchased of *A. B.* a number of scrip shares, but having kept no such book, the specific directions were not and could not be followed. The company was afterwards wound up, when it was sought to charge *A. B.* as a contributory, but *held*, that the company was not entitled to treat the transaction as void, by reason of the non-observance of the forms, which their own irregularity and neglect had made it impossible to observe.

Held, also, that scrip shares were not inalienable. *In re Northern Coal Mining Company, ex parte Bagge*, 13 Beav. 162.

The Legal Observer,

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SATURDAY, JUNE 26, 1852.  
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COUNTY COURTS' FURTHER EXTENSION BILL.

THE alterations introduced in this Bill upon re-commitment in the Commons, and which were specifically enumerated in our last publication, have been adopted by the House of Lords without any material variation, and the measure now waits only for the Royal Assent.

The agitation set on foot by a portion of the Junior Bar, and which was zealously supported and promoted by *The Times* newspaper, has been for the present in a great degree successful. That provision of the Act 9 & 10 Vict. c. 95, which restricted the right of appearance for parties in the County Courts to an attorney, or a barrister instructed by an attorney, is repealed, and it is now competent for any member of the Bar to appear and practise in the County Courts without the intervention of an attorney.¹ The Law Lords, one and all, took occasion to express their hope and expectation, that the repeal of this provision would not affect the established etiquette of the Bar, not be construed into an encouragement to trespass upon the province and functions of the attorney. If the confidence with which their Lordships individually expressed themselves on this point, should turn out to be well founded, the alteration of the law which has now obtained the sanction of the Legislature would become

of little or no practical importance. Whether a barrister declines to act in Court for a client without receiving his instructions from an attorney, in obedience to an express statutory provision, or in accordance with professional usage, is of little consequence, and involves at best nothing more than matter of feeling.

We may at once, however, frankly state, that we cannot participate in the confident expectations which have been held out in Parliament, that the etiquette which has so long prevailed, and has governed the relations between barristers and clients, will in future be preserved. The ingenious fabrications and gross mis-statements resorted to for the purpose of obtaining votes to sanction the repeal of the obnoxious provision contained in the County Court Act, have had some more substantial object than an equivocal endeavour to uphold professional dignity. Amongst the latest, though not perhaps the most glaring, of the misrepresentations with which the Legislature has been misled, is that which Lord Brougham was instructed to ventilate in the debate on Monday night last, when his lordship is reported to have stated, that barristers had been threatened by attorneys, that if they accepted a brief in the County Courts, they must never again expect to have any business given them elsewhere. Our confidence in the good sense of that branch of the Profession accused of this absurdity, convinces us that the noble and learned lord who made this statement was imposed upon. Let it be *proved* that any attorney was so deficient in the spirit that pervades the branch of the Profession to which he belongs as to utter or act upon such a principle, and we can venture to promise that he will be as severely condemned by those in his own rank of the Profession as by any member of the Bar or

¹ The clause, as it passed the Commons, was much less objectionable than some of the forms in which it was previously proposed. It has since been altered in the House of Lords for the purpose of excluding any attorney from being "an advocate retained by the attorney acting generally:" in fact preventing one attorney from acting as the *agent* or holding the brief of another.

the Bench. That the Seniors of the Bar are profoundly impressed with the necessity of preserving the established rule of etiquette, and will sincerely endeavour to uphold it, no one can doubt. That they can do so successfully without the support of some legislative enactment, we must be permitted to question.

At all events, it is satisfactory to know that those most eminent in rank and station, and who from experience as well as position may justly be regarded as the heads of the Profession, have unanimously and explicitly declared their opinion, that the functions of barrister and attorney should be kept distinct, and that any endeavour by one branch to intrude upon the province of the other should be discouraged and suppressed. This emphatic and unequivocal declaration, it may be hoped, will preclude the necessity of adopting those measures of self-defence which, however justifiable, could not be resorted to without producing estrangement and lowering the Legal Profession in the eye of the public.

As the printed act cannot for some days find its way into the hands of our readers, it may be convenient to add, that the statement referred to by some of our correspondents, that the House of Commons assented to a proposal for putting the *articled clerks of attorneys* on the same footing as barristers and attorneys in the County Courts was wholly unfounded. It appears to us to be matter of regret, however, that the Legislature has not recognised the right of an attorney to depute his articulated clerk to appear for him in the County Courts. The fact that a clerk is articulated, and the Stamp Duty payable to the Government upon the execution of the articles, would afford sufficient security that the clerk was not created for the occasion. That some such arrangement would be convenient to attorneys and useful to the clerks, is too manifest to require argument. It may happen, and no doubt has often happened, that an attorney, not overwhelmed with business, finds himself engaged to attend to his clients' interests in one of the Superior Courts and in a County Court on the same day and at the same hour. In such a case, what could be more convenient, and at the same time more reasonable, than that the attorney, whilst he devoted his own attention to the case in the Superior Court, should send his clerk to the County Court to act for him? To imagine that the County Courts would be lowered in dignity or importance by the appearance of articulated clerks

amongst the practitioners is a fanciful apprehension.

The Judges of the Superior Courts are constantly and hourly in the habit of hearing questions of great importance discussed at their Chambers by the clerks of attorneys, and why the same persons should not be deemed adequate to conduct a plaint in a County Court, for the delivery of a ton of coals, or payment of a chandlers shop bill, we are at a loss to conceive. If the principle upon which the Committee of the House of Commons proceeded in altering the clause relating to the qualification of persons entitled to practise in the County Courts was, that the suitor should have the opportunity of selecting his own advocate without regard to professional distinctions, that principle would be violated by preventing any clerk of an attorney from acting with the approval of a client; but a gentleman who, in conformity with the law, has entered into articles of clerkship in order to his admission as an attorney or solicitor in her Majesty's Courts at Westminster, and has paid the Stamp Duty of 120*l.* imposed upon such articles of clerkship, may surely be permitted to appear in a Small Debts Court in the absence, but under the directions and responsibility of the attorney to whom he is articulated, without offending the dignity of the County Court Judges, or materially disturbing the economy of the Profession.

THE REMAINING LAW BILLS BEFORE PARLIAMENT.

SINCE our last notice of the Law Bills before Parliament, many important changes have been introduced, and the Bills intended to pass have arrived at the last stage.

In the *Common Law Procedure Bill* the science and practice of pleading have been materially simplified by striking out the clause by which it was proposed to enact that duplicity, argumentativeness, or uncertainty in pleading, if the effect was to embarrass or mislead, might still be the subject of special demurrer. As the Bill now stands, it is declared, without qualification or exception, that "no pleading shall be deemed insufficient for any defect which could heretofore only be objected to by special demurrer." The very questionable provision, too, by which it was proposed to enact, that either party may, by leave of a Judge, plead and demur to the same pleading at the same time, upon an

affidavit of the party or his attorney, of the truth of the matters of fact sought to be pleaded, and that he is advised and believes that the objections raised by demurrer are good and valid in law, has been modified and rendered less objectionable.

The Improvement of the *Jurisdiction in Equity Bill* has also been amended by striking out the clause empowering a Court of Law, when an equitable defence has been raised, to send an issue to a Court of Equity; and several other changes of greater or less importance have been introduced, to which it is intended to direct the attention of our readers, as soon as a copy of the Act can be procured from the Queen's printers.

A clause has been added requiring the Judges and officers of the Court to take "judicial notice" of the seal or signature to answers, affidavits, &c., sworn before any Court, Judge, notary public, or other person authorised to administer oaths in Ireland, Scotland, the British Colonies and Islands, or before a British Consul in any foreign country.

And the Lord Chancellor is empowered to increase the salary of the Examiners.

The *Suitors in Chancery Relief Bill* appears also on the eve of passing. Some delay has taken place in adjusting the compensations of officers or clerks whose position will be altered by the intended improvements. The great boon to the suitors will be the immediate relief effected by paying all the salaries of the Judges out of the Consolidated Fund,—a principle which must hereafter be extended to pensions, compensations, and the general expenses of the Court. Many fees will be entirely abolished, and the remainder collected more conveniently by stamps.

On the motion of the Master of the Rolls, the *Masters Abolition Bill* was modified by immediately dispensing with the services of two of the present Masters only,—namely, Master Farrer and Master Brougham,—instead of four as originally proposed,—leaving the other Masters to continue to work up the various matters now in their offices, and to apply their attention to such fresh matters as may arise in the suits already referred to them. Three only of the Masters' Chief Clerks have been selected as Chief Clerks to the Judges,—namely, Mr. Whiting, Mr. Leman, and Mr. Pugh. Eight being required, the Judges will have to select five from the body of solicitors, so that each Judge may have two efficient Chief Clerks.

As the Master of the Rolls and the Vice-Chancellors are to despatch both Court and Chamber business without any further judicial help, it is the more necessary that the Chief Clerks should all be fully competent to discharge the duties of their office.

The Attorney-General has withdrawn the *Metropolitan Grand Juries Abolition Bill*, with an intimation that it would be re-introduced next Session.

The *County Courts' Extension Bill* is referred to in a separate article.

NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

AMENDMENT OF THE LAW OF WILLS.

15 VICT. C. 24.

1 Vict. c. 26. When signature to a will shall be deemed valid; s. 1.

Act to extend to certain wills already made; s. 2.

Interpretation of "will;" s. 3.

Short title of Act; s. 4.

The following are the sections of the Act:—

An Act for the Amendment of an Act passed in the First Year of the Reign of her Majesty Queen Victoria, intitled An Act for the Amendment of the Laws with respect to Wills. [17th June, 1852.]

Whereas the laws with respect to the execution of wills require further amendment: Be it therefore enacted,

1. Where by an Act passed in the 1 Vict. c. 26, intituled "An Act for the Amendment of the Laws with respect to Wills," it is enacted, that no will shall be valid unless it shall be signed at the foot or end thereof by the testator, or by some other person in his presence, and by his direction: Every will shall, so far only as regards the position of the signature of the testator, or of the person signing for him as aforesaid, be deemed to be valid within the said enactment, as explained by this Act, if the signature shall be so placed at or after, or following, or under, or beside, or opposite to the end of the will, that it shall be apparent on the face of the will that the testator intended to give effect by such his signature to the writing signed as his will, and that no such will shall be affected by the circumstance that the signature shall not follow or be immediately after the foot or end of the will, or by the circumstance that a blank space shall intervene between the concluding word of the will and the signature, or by the circumstance that the signature shall be placed among the words of the testimonium clause or of the clause of attestation, or shall follow or be after or under the clause of attestation, either with or without a blank space intervening, or shall

follow or be after, or under, or beside the name or one of the names of the subscribing witnesses, or by the circumstance that the signature shall be on a side or page or other portion of the paper or papers containing the will whereon no clause or paragraph or disposing part of the will shall be written above the signature, or by the circumstance that there shall appear to be sufficient space on or at the bottom of the preceding side or page or other portion of the same paper on which the will is written to contain the signature; and the enumeration of the above circumstances shall not restrict the generality of the above enactment; but no signature under the said Act or this Act shall be operative to give effect to any disposition or direction which is underneath or which follows it, nor shall it give effect to any disposition or direction inserted after the signature shall be made.

2. The provisions of this Act shall extend and be applied to every will already made, where administration or probate has not already been granted or ordered by a Court of competent jurisdiction in consequence of the defective execution of such will, or where the property, not being within the jurisdiction of the Ecclesiastical Courts, has not been possessed or enjoyed by some person or persons claiming to be entitled thereto in consequence of the defective execution of such will, or the right thereto shall not have been decided to be in some other person or persons than the persons claiming under the will, by a Court of competent jurisdiction, in consequence of the defective execution of such will.

3. The word "Will" shall in the construction of this Act be interpreted in like manner as the same is directed to be interpreted under the provisions in this behalf contained in the said Act of the 1st year of the reign of her Majesty Queen Victoria.

4. This Act may be cited as "The Wills Act Amendment Act, 1852."

SHORTENING TIME BETWEEN PARLIAMENTS.

15 VICT. C. 23.

An Act to shorten the Time required for assembling Parliament after a Dissolution thereof. [17th June, 1852.]

Whereas the time required by law to intervene between the date of the Proclamation for assembling Parliament and the day appointed for the meeting thereof may be reasonably shortened: Be it declared and enacted, therefore, That so often as her Majesty shall by her Royal Proclamation, appoint a time for the first meeting of the Parliament of the United Kingdom of Great Britain and Ireland after a dissolution thereof, the time so to be appointed may be at any time not less than 35 days after the date of such proclamation, the Act of the 5 Anne, c. 8, or the Act of the 7 & 8 Wm. 3, c. 25, or any other law or usage, to the contrary notwithstanding.

NOTICES OF NEW BOOKS.

A Treatise on the Law of Master and Servant, including therein Masters and Workmen in every description of Trade and Occupation; with an Appendix of Statutes. By CHARLES MANLEY SMITH, of the Middle Temple, Special Pleader. London: S. Sweet. 1852. Pp. 568.

THIS work supplies a deficiency in the catalogue of legal treatises. It is true that in the valuable works on contracts and on principal and agent, the Law of Master and Servant is treated of with comparative brevity. So, also, such parts of the subject as come within the jurisdiction of magistrates, or the scope of the Criminal Law, are dealt with concisely in our digests and abridgments. But a complete work on all branches of the subject, equally adapted for public and professional use, was palpably required; and this want has been ably supplied. Mr. Manley Smith has with great diligence collected all the scattered materials of this department of the Law, and with much skill and learning arranged every enactment and decision bearing thereon.

We shall submit to our readers a statement of the scope of Mr. Smith's labours, enlarged somewhat beyond the concise table of "Contents" given at the commencement of the volume.

The Introduction comprises a concise and valuable review of the past state of the law, from the earliest times, from which we extract the following summary of the effect of the statutes from 5 Eliz. c. 4:—

"At the commencement of the reign of Queen Elizabeth, all former acts regulating wages were repealed, 'chiefly for that the wages and allowances limited and rated in many of the said statutes were in divers places too small, and not answerable to that time respecting the advancement of prices of all things belonging to the said servants and labourers,' and power was given to justices of the peace and magistrates of cities and burghs to rate wages and fix prices of work. Acts of Parliament conferring similar powers were also passed in Scotland, where their provisions were found so beneficial that they were afterwards extended to colliers. But so much of those Acts as authorised and empowered justices of the peace and magistrates of cities and burghs to rate wages and fix prices of work for artificers, labourers, and craftsmen, has since been altogether repealed; and it is remarkable as showing the entire change of public opinion upon this subject, that in the act for the arbitration of disputes between masters and workmen, which was passed in 1824, there is a special

provision, that nothing therein contained shall authorise justices, acting in execution of that act, to establish a rate of wages without the mutual consent of both master and workmen.

"The statute of 5 Eliz. c. 4, only gave power to the magistrates 'to limit, rate, and appoint' wages, and gave no power to order payment of them. That power was, however, assumed by the magistrates, and their assumption of it was, by construction of law, held to be legal. But the statute being deficient, as it extended only to such wages as should be rated, and to servants in husbandry, and contained no power to admit the servant's oath in evidence; another Act was passed in 20 Geo. 2, giving more extensive powers to magistrates, and extending those powers to disputes between masters and various other descriptions of servants than those mentioned in the statute of Elizabeth. And this Act has been found so beneficial in some respects, that although, as we have seen, repealed as to rating wages, several other Acts have been subsequently passed extending the powers conferred by it in other respects.

"The Statute Book also contains, in addition to the Act relating to arbitration of disputes between masters and workmen, an Act consolidating the law relating to combinations amongst masters and workmen, and also an Act relating to the payment of wages otherwise than in money, commonly called the Truck Act, which are applicable to most trades, a large number of statutes applicable to masters and servants in particular trades, which it is not thought necessary in this place to refer to at greater length, as they are not of general interest: the principal of those now in existence will be found in the Appendix.

"Acts of Parliament have also been passed at various times for the regulation of the employment of children and young persons in cotton and other factories, and for the preservation of health and morals.

"The first Act for this purpose was passed in 1802, and was amended in 1819. Further enactments on the subject were made in 1825, the provisions of which have been defeated for want of form, it was found necessary again to amend the law in 1829. At the commencement of the reign of Wm. 4, however, all these Acts (except the first) were repealed, and other regulations enacted in lieu thereof. But a few years afterwards those regulations were in their turn also repealed, and another Act passed, which (as amended by subsequent Acts) now regulates the law upon the subject.

"The provisions contained in these Acts, which are applicable to young persons, (that is, persons above 13 and under 18 years of age), were first extended to females above that age in 1844. But as it is thought advisable to print these Acts *in extenso* in the Appendix, it is not considered necessary to advert further to them in this place.

"The most recent statute upon the Law of Master and Servant, is that passed in the last session of Parliament for the protection of apprentices and servants, which will be further

adverted to hereafter, and which for the first time rendered it a misdemeanor for any master or mistress, legally bound to supply necessary food and clothing or lodging to an apprentice or servant, wilfully, and without lawful excuse, to refuse or neglect to provide the same."

The following are the topics treated of in the several chapters:—

1. *The Parties to the contract.*—Who may contract the relationship of master and servant. Generally; married women; infants; lunatics; corporations; bankrupts and insolvents.

2. *Contract of Hiring and Service.*—Firstly, the requisites of the contract. When writing necessary; Statute of Frauds; the stamp. Secondly, the interpretation of the contract. Admissibility of parol evidence; the relationship created by the contract; partner or servant; apprentice or servant; tenant or servant; general hiring; yearly hiring, &c.; how far master bound to find work for servant; agreements in restraint of trade contained in contracts of hiring and service.

3. *The duties of the Servant to the Master, and the rights and remedies of the Master to enforce the performance of them.*—Firstly, as between the master and servant. Duties of servant to master, and actions by master against servant for breach thereof; chastisement of servant; discharge of servant; what cause will do to justify his discharge. Secondly, as between the master and third persons. Of the action for enticing away a servant; of the action for harbouring a servant after notice; of the action by a master for the earnings of a servant; of the action for beating and disabling a servant; of the action for seduction.

4. *The Duties of the Master to the Servant, and the rights and remedies of the Servant to enforce the performance of them.*—Of the master's duty to receive the servant into his service, and to retain him; and the servant's remedies for breach of such duties; remedies for servant wrongfully discharged; of the master's duty to pay the servant's wages, and the servant's remedies to recover them—default; bankruptcy; death of master—default; death of servant; of the master's duty to supply food and medicine to the servant; Statute 14 & 15 Vict. c. 11; of the master's duty to indemnify the servant from the consequences of obeying his orders.

5. *The Liability of a Master to third persons for the acts of his servant.*—In cases of contract; in cases of tort—*criminaliter*; in cases of tort—*civiliter*.

6. *The Liability of Servant to third persons for acts done on behalf of his Master.*—In cases of contract; in cases of tort—*criminaliter*; in cases of tort—*civiliter*.

7. *The Servant's character.*—The character—*defamation*; false and forged character; Stat. 32 Geo. 3, c. 56.

8. *Offences by Servants against their Masters.*—Murder of master by servant; assault on master by servant; burglary by servant in

master's house; servant negligently firing master's house; stealing in dwelling-house to value of 5*l.*; stealing in a shop, warehouse, or counting-house; larceny and embezzlement by clerks and servants; who is a servant within 7 & 8 Geo. 4, c. 29; what is a receipt by virtue of his employment; what is an embezzlement; indictment; offences by public servants; embezzlement by servants of the Bank of England; by servants of the Bank of Ireland; by servants of the South Sea Company; by servants in the Customs and Excise; by servants in the Post Office.

9. *Jurisdiction of Justices* in disputes between Masters and Servants.—Generally; 20 Geo. 2, c. 19; 6 Geo. 3, c. 25; 4 Geo. 4, c. 34; cases provided for by 4 Geo. 4, c. 34; order or conviction and warrant of commitment; arbitration of disputes between masters and workmen; 5 Geo. 4, c. 96.

10. *Combination amongst Masters and Workmen*.—The Stat. 6 Geo. 4, c. 129; observations thereon; conspiracies amongst masters and workmen, &c.

11. *Legacies to servants*.

The Appendix contains an Alphabetical Table showing the various Statutes applicable to workmen in particular trades, &c., under many of which jurisdiction is given to magistrates.

As an example of the mode in which Mr. Manley Smith has executed his task, we shall extract part of the section on *Corporations*, especially as it treats of the mode of appointing a very important class of public officers or servants in *Municipal Corporations*, namely, Town Clerks and Clerks of the Peace:—

"Contracts in general, in order to be binding upon a corporation, must be under the common seal of the corporate body. This rule is to be found in all authorities, beginning with those collected from the *Year Books in Brooke's Abridgment*, tit. '*Corporations and Capacities*,' down to the latest of the present day; the ground of the rule being, that as a corporation is a body politic, and invisible, it can only act and speak by its common seal; or as it is said *arguendo* in *Reg. v. Bigg*, 'the common seal is the hand and mouth of the corporation.'

"Accordingly, no municipal corporation (except London,) can appoint an attorney except under the corporate seal.

"And, therefore, where an attorney who was town clerk and clerk of the peace, received instructions from the mayor, and other members of the town council, to take all necessary steps to oppose certain measures in Parliament, and to conduct certain suits in Chancery, relating to the borough, but no authority was given to him under the seal of the corporation; it was held, that he could not sustain an action against the corporation for his costs.

"So where a person, who, previously to the passing of the Statute 5 & 6 Wm. 4, c. 76, had held the offices of town clerk and clerk of the

peace, and also clerk to the justices, was, after the passing of that statute, re-appointed to the offices of town clerk and clerk of the peace at an increased salary, by a resolution passed at a meeting, and entered upon the minutes, of the town council: but there was no agreement under the seal of the corporation: It was held, upon issue joined on a return to a *mandamus* for compensation under 5 & 6 Wm. 4, c. 76, s. 66, bringing in question the fact of the re-appointment, that it could not be proved by an entry in the minutes of the town council, and, therefore, although there was no doubt that an agreement to the effect contended for had been made, yet that it could not bind the corporation without being sealed."

There are, however, exceptions to this general rule. Public companies may appoint a solicitor under the authority of their Act of Parliament without the use of their corporate seal. Thus, Mr. Smith observes that—

"There are, however, two cases, in which it was held that the solicitors employed in obtaining the Acts of Parliament incorporating certain companies had a legal claim against them when incorporated in respect of their services in obtaining the Act of Incorporation, although they were not, and from the nature of the case could not be, appointed under the seal of the corporate body. But in each of those cases there was a clause in the Act directing that the costs of obtaining the Act should be paid, in preference to all other claims, out of the first money received by the defendants; and those cases were decided on the ground that the meaning of the Legislature was to make the incorporated companies, as soon as they had obtained funds, debtors to the solicitors who had obtained the Acts for all the costs which they had incurred. These cases do not, therefore, as at first might appear, form any exception to the general rule above stated."

Various other exceptions are stated, founded on expediency and convenience, affording, as Mr. Justice Story says, an illustration of the expansive power of the Common Law, which acquires flexibility and moulds itself from time to time so as to accomplish the various ends of Society.

LAW OF COSTS.

ISSUES OF FACT.—DEMURRER.—GENERAL COSTS.

THERE are several conflicting decisions in the Superior Courts of Common Law relating to the costs to which a plaintiff may be entitled, where he is wholly or partially successful on the trial of issues of fact, but fails in his action on a demurrer.

In *Partridge v. Gardner*, (4 Exch. Rep.

303,) the defendant, in an action of assumpsit, pleaded several pleas upon which issues were joined; and he also pleaded another plea to which the plaintiff demurred. The issues were tried and found for the plaintiff. Afterwards, judgment was given for the defendant on the demurrer to one of the pleas, the Court holding the declaration to be insufficient. It was held by the Court of Exchequer, that the plaintiff was *not* entitled under the 4 Anne, c. 16, s. 5, to the costs of the issues found for him, as no issue in fact had been found for the defendant also.

The Court of Exchequer decided, also, in the case of *Howell v. Rodbard*, (4 Exch. Rep. 309,) that the plaintiff has no right under the Statute of Gloucester, unless he recovers damages, and he has no right under the Statute of Anne unless the defendant succeeds on one or more of several pleas.

On the other hand, in *Bird v. Higginson*, 5 Adol. & E. 83, it was held by the Court of Queen's Bench, that the plaintiff was entitled to all the costs of the trial on the issue on which he succeeded, including pleadings, briefs, witnesses, &c. In that case, to a declaration in two counts, the defendant pleaded two pleas to the first, and one plea to the second count. Issues were joined on one plea to the first count and on the plea to the second count. The other plea to the first count was demurred to. The plaintiff took the issues of fact to trial, and a verdict was found for the plaintiff on the issue on the first count and damages assessed; and for the defendant on the issue on the second count. Afterwards, on the demurrer to the other plea to the first count, the defendant had judgment.

We next turn to the decisions of the Court of Common Pleas. In the case of *Clarke v. Allatt*, (4 C. B. Reports, 335,) in an action of assumpsit on a special agreement, the defendant pleaded *non assumpsit* and a special plea to the whole cause of action, to which the plaintiff demurred. A verdict was given for the plaintiff on the trial of the issue of fact, with 5*l.* damages, and the defendant afterwards obtained judgment on the demurrer to the special plea. It was held that the plaintiff was entitled to the costs of the issue of fact.

The recent case of *Callander v. Howard*, just reported in the 10th volume of the Common Bench Reports, p. 302, was an action of assumpsit upon certain bills of exchange, with a count for goods sold and

delivered, money paid, and interest, and a count upon an account stated. The defendant pleaded 16 pleas, to one of which (*going to the whole cause of action*) there was a demurrer. Upon the trial, *all* the issues of fact were found for the *plaintiff*; and, upon the argument of the demurrer, the judgment was for the *defendant*. It was held, contrary to *Partridge v. Gardner* and *Howell v. Rodbard*, and affirming *Bird v. Higginson*, and *Clarke v. Allatt*, that the plaintiff was entitled to the costs of the issues of fact, though the defendant had the general costs of the cause.

Amidst this conflict of authority, it may be useful to give the judgment of the Court of Common Pleas in the case last referred to.

Jervis, C. J.:—"I am of opinion that this rule must be made absolute. If this case were wanting in authority, it might have been necessary to enter more fully upon a consideration of the proper construction to be put upon the Statute of Anne. But, for the purpose of disposing of this rule, it strikes me that we may well abstain from that course,—though I will presently very briefly advert to the provisions of that Statute. So far as concerns this Court,—seeing how important it is to adhere to settled rules upon the construction of statutes relating to costs,—I think we are justified in adhering to the decision in *Clarke v. Allatt*, even though our so doing should have the effect of indirectly, or even directly, overruling a considered judgment of the Court of Exchequer, more especially as I cannot help thinking that that Court would have hesitated to overrule the case of *Bird v. Higginson*, if their attention had been called to the fact that they were also overruling the case of *Clarke v. Allatt*. It is impossible to arrive at the conclusion we arrive at in this case, without seeing that we do in fact distinctly,—so far, at least, as this Court is concerned,—overrule *Partridge v. Gardner* and *Howell v. Rodbard*; it will be necessary, therefore, to examine the authorities, as well as the statute itself upon which they profess to be founded, in order to see that we arrive at a right conclusion. It has been well observed by Mr. Willes, that the decisions in this Court have been uniform and consistent. In *Yates v. Gun*, Barnes, 141,—which is, I believe, the earliest case upon the subject,—this Court decided, that, under circumstances like those of the present case, the plaintiff was entitled to costs. And in *Clarke v. Allatt*, they decided in accordance with that view. *Yates v. Gun* was followed by *Bird v. Higginson*, where the Court of Queen's Bench overruled a case of *Cooke v. Sayer*, 2 Burr. 753; 2 Wils. 85, a decision of their own Court, which they deemed not satisfactory. I was concerned in *Bird v. Higginson*, and I know that the greatest attention was paid to the case by *Littledale, J.*, by whom the judgment was pre-

pared. *Richmond v. Johnson*, 7 East, 568, and a similar case of *Howard v. Cheshire*, Say. Rep. 260, were there treated by the Court as wholly inapplicable to the question before them: those cases decided, that, where a plaintiff is entitled to judgment upon the whole record, but, by reason of some collateral matter, such judgment gives him no costs, he is not entitled to costs under the Statute of Anne. I think the case of *Richmond v. Johnson* does not bear the construction which the Court of Exchequer have put upon it. They say that the conclusion drawn in *Bird v. Higginson* is not warranted by the cases, and is opposed to the established construction of the Statute of Anne, and that, according to that construction, a plaintiff is not (under the Statute of Anne) entitled to the costs of issues in fact found for him, unless some issue in fact has been found for the defendant also. It seems to me that that argument received the correct answer, in what fell from my brother Williams in the course of this discussion. If the Statute of Anne is applicable only to cases where the plaintiff, independently of that statute, would get no costs, it follows that the plaintiff in the case of *Richmond v. Johnson* could not have been entitled to costs under it; because he had his judgment upon all the issues, and consequently would have had his costs, but for the certificate which deprived him of the benefit of the Statute of Gloucester. That clearly shows that *Richmond v. Johnson* has no bearing whatever upon the cases of *Partridge v. Gardner* and *Howell v. Rodbard*. And there is nothing in the statute that is inconsistent with this view. The 4th section enacts, that it shall be lawful for any defendant or tenant in any action or suit, or for any plaintiff in replevin, in any Court of Record, with the leave of the same Court, to plead as many several matters thereto as he shall think necessary for his defence. And, to prevent a multiplicity of frivolous pleas, the 5th section provides, 'that, if any such matter shall, upon a demurrer joined, be judged insufficient, costs shall be given at the discretion of the Court; or, if a verdict shall be found upon any issue in the said cause, for the plaintiff or defendant, costs shall be also given in like manner, unless the Judge who tried the said issue, shall certify that the said defendant or tenant, or plaintiff in replevin, had a probable cause to plead such matter which upon the said issue shall be found against him.' In other words, a defendant who chooses to plead frivolous pleas, must pay the costs occasioned by his so doing, even though he has judgment on other issues, which go to the whole cause of action. For these reasons, it seems to me that the true construction of the Statute of Anne well warrants the decision in *Bird v. Higginson* and *Clarke v. Allatt*; and that the cases upon which the Court of Exchequer rely in *Partridge v. Gardner* and *Howell v. Rodbard*, do not justify the conclusion they there came to. Upon principle, therefore, as well as upon authority, I think we do no violence to the

statute in making the rule to review the taxation in this case absolute. *Callander v. Howard*, 10 C. B. 302.

NONSUITS AND COSTS OF APPEAL IN COUNTY COURTS.

It is now settled that the Judge of a County Court has power to nonsuit the plaintiff in all cases in which the Judge of a Superior Court can do so; and on an appeal from the County Court, the successful party, as a general rule, is entitled to costs. These points were considered and decided by the Court of Exchequer in a case recently reported. Mr. Baron Parkes, in his judgment, said—

"This case was argued before my brother Martin and myself at the Sittings after last Trinity Term. The question was, whether or not the plaintiff in an action for money had and received, in which there was a plea of set-off, after the Judge had taken time to consider, and before the judge had delivered his verdict, could be nonsuited; and whether the Judge had power to direct a nonsuit, according to the Acts of Parliament which regulate the County Courts.

"At Common Law, whenever the plaintiff ought to appear in Court, he was at liberty to withdraw: Co. Litt. 138, b., 139, a. In the present case, when the Judge was about to deliver his opinion, and indeed by the permission of the Judge, the plaintiff withdrew.

"We have looked through the County Court Acts, but do not find any clause contained in them that prohibits the plaintiff from exercising this Common Law right. We therefore think that in this case the plaintiff was at liberty to be nonsuited, and that the Judge was right in permitting him to be nonsuited.

"We have also taken the point with respect to the costs of the appeal into our consideration, and have consulted some of the members of this Court and other Judges, and the opinion of all of them is, that in these cases the costs of the appeal ought to follow the result; if the appellant succeeds, he ought to have the costs; if the respondent succeeds, he ought to have the costs. If the appellant is not to have the costs when the Judge is wrong, the effect would be a denial of justice: in a County Court, the costs are often much more important in amount than the debt itself. In this case, we are of opinion that the respondent is entitled to costs." *Robinson v. Laurence*, 7 Exch. R. 123."

In a subsequent case, on an appeal from a County Court, the Court expressed an opinion in favour of the appellant, but took time to consult the Judges of the other Courts, in order that a general rule might

be adopted as to the costs of appeal. Parke, B., said—

"We have consulted the Judges of the other Courts, and they are all of opinion that the costs of the appeal ought to follow the event. It was so decided by this Court in the case of *Robinson v. Lawrence*; and indeed, if the appellant did not have his costs when the Judge was wrong, there would be a manifest failure of justice. *Hunt v. Wray*, 7 Exch. R. 125, n.

DOUBTS ON THE BANKRUPT LAW CONSOLIDATION ACT.

To the Editor of the Legal Observer.

SIR,—Your Correspondent, Querist, (L. O. 543,) inquires, where are the Rules and Orders framed in pursuance of the Bankrupt Law Consolidation Act, 1849? Perhaps your Correspondent is not aware that an order was signed by certain of the Commissioners, which re-enacts *en masse* all the Rules and Orders in Bankruptcy which were in force at the time the Bankrupt Law Consolidation Act, 1849, came into operation, with a saving clause that they are only to be in force so far as they are not inconsistent with the Bankrupt Law Consolidation Act, 1849, and which Rules and Orders are thereby made applicable to petitions for adjudication as well as to Commissions and fiats. That is, notwithstanding the intention was by the Consolidation Act to get rid of doubt, this specimen of Rules and Orders will show how effectually it has answered its purpose. This veritable specimen of necessary absurdity came under my notice in the darkest and dingiest office of the Court of Bankruptcy, (I need hardly say I mean the Taxing Office,) where a copy is affixed to the side of the room. I know not if there are any others, but perhaps by the fractional contribution, of your Correspondents the matter may be somewhat elucidated.

Another specimen of the effect of the Consolidation Act is the state of the law of judgments by consent. The practice is only to file a copy of the order, &c., in cases where the defendant is *apparently* a trader within the meaning of the Consolidation Act. It is a question of great nicety, and is important as affecting with doubt those securities hitherto considered as of the highest class. Before the Consolidation Act, a warrant of attorney not filed in accordance with the requirements of the various Acts of Parliament was valid as against all parties, except assignees of bankrupts, assignees of insolvents, and creditors of insolvents, (under 1 & 2 Vict. c. 110,) and the party giving the same (See Chit. N. P. 866). But the Consolidation Act has entirely altered the rule as to filing; thus by s. 135,—“Every warrant of attorney, cognovit, or consent given by any bankrupt (within two months of the filing of a petition for adjudication) for an antecedent debt is null and void;” by s. 136, every warrant of attorney or cognovit not

filed within 21 days after execution thereof, pursuant to 3 Geo. 4, c. 39, shall be deemed “fraudulent and void to all intents and purposes whatsoever;” and the 137th section puts Judges’ Orders made by consent on the same footing as warrants of attorney and cognovits, and extends enactments of 3 Geo. 4, c. 39, and 6 & 7 Vict. to such Judges’ Orders. Now, therefore, Judges’ Orders by consent not filed are void as against assignees of bankrupts and insolvents under 7 G. 4, c. 57, the 1 & 2 Vict. c. 110, the 6 & 7 Vict., and the 7 & 8 Vict. c. 96.

It may, however, be contended that the Consolidation Act did not intend to render warrants of attorney and Judges’ Orders void as against insolvents, because it is only a Bankruptcy Act, and not an Insolvent Act; but should even this be conceded, the point is still in doubt: thus, every order, &c., must be filed to be good as against traders subject to the Law of Bankruptcy—but there is no prohibition against any person trading, nor is there any law to make a man openly avow his trade, and the consequence is, that although an attorney may become a bankrupt as a scrivener, yet a plaintiff filing an order against an attorney defendant, would not be allowed the costs of it, because it is *not apparently* necessary. Again, a barrister may be a bankrupt as a builder, and even a noble lord may be a bankrupt as a dealer in horses. These are facts not fictions, and are precedents in law and these peculiarities of *latent* trading as here instanced, are capable of extensive application.

It appears, therefore, that judgments on orders by consent are rendered of doubtful value. The Consolidation Act is indefinite, to say the least of it, and the narrow interpretation put upon it leads only to obscurity, as the Act declares “all judgments are void in certain cases.” The Law says, because the Act which declares this is a Bankruptcy Act, therefore the Act should be interpreted, “In cases of bankruptcy all judgments by consent are void in certain cases.”

Then, with regard to warrants of attorney; before the Consolidation Act, if judgment were signed upon a warrant of attorney within 21 days, it was not necessary to file an affidavit of execution, now it appears by the Consolidation Act (*Acramas and another v. Hernaman*) that an affidavit of execution must always be filed. This is an important difference, and of course consents for judgment are liable to the same regulations. The case of a judgment on an order made by consent in the ordinary manner, is still more complex, for the order is made on the consent of the plaintiff, and is not, as by the defendant, an order obtained by consent; although it may be said that the taking steps to obtain the plaintiff’s consent, is a proof of that which may be equivalent to consent. Now, the question is, Should the order for judgment when obtained on the consent of the plaintiff be filed? I need hardly say, that in practice it is never done—and yet it is clear, if this be the right practice, that by this means judg-

ments may be obtained in defiance of the Consolidation Act.

In conclusion, what course should an attorney adopt to avoid the liability of an action for negligence? There is one way—file all orders for judgment—but here I think it may be proper to introduce notice of a petty innovation—

it is this: in the Queen's Bench the price of filing has been raised from 1s. to 2s.—probably the public would be quite satisfied with paying 1s., at any rate, the novelty is worth some notice if it be not worthy of explanation.

T. H. S.

CANDIDATES WHO PASSED THE EXAMINATION,

Trinity Term, 1852.

Names of Candidates.

To whom Articled, Assigned, &c.

Abbott, Charles Edward	Charles Hinnell
Andrews, Edward	George Andrews
Armstrong, Charles	George Walford Armstrong
Arnison, William Burra	Laurence Harrison
Aston, David	George Lockett Robinson
Atkins, John, jun.	John Atkins, sen.
Baddeley, Thomas, jun.	Thomas Baddeley
Bailey, John Rand	George Marshall
Barker, Charles Munro	Joseph John Wright
Barlow, Charles	John Barlow
Barrett, Charles Prentice	Samuel Gwinnett Hornidge
Baxter, Dudley	Stafford Stratton Baxter
Baxter, Robert Dudley, B.A.	Robert Baxter
Beaumont, Henry	William Nash Ottaway
Bickersteth, John Pares, B.A.	Richard Radcliffe; Andrew Tucker Squarey
Bridgman, Joseph	Samuel Johnson Roberts
Capes, Henry Hawksley	William Hirst
Carnell, George Frederick	Thomas Carnell
Chamberlin, Charles Henry	Samuel Palmer; Henry Palmer
Cheyne, Talbot	Leph Richmond
Christmas, John Sanders	Ebenezer Foster, jun.
Clark, John	William Dudley
Clarke, George	Thomas Hyde
Cook, Charles Henry	Charles Cook
Cooke, Thomas William Tabourdin	William Everest; James Smith; James Currie
Courtenay, Richard	George Atkinson
Curtis, Charles John	Edmund George Randall
Curtis, Thomas John	Charles Archer Curtis
Daubeny, Robert	John Locke Hoyte
Drew, Charles Thomas	Stephen Williams
Earle, Charles	George Sperling
Edell, James	Charles Harvey; Laurence Desborough
Edwards, Henry Richard	Timothy Surr
Ellis, William Moreton	Horatio Barnett
Fox, John, jun.	James Saunders; John Fox
Fryer, William	William Latham
Gaitskell, Alfred Ashley	Thomas Pryer; William Senhouse Gaitskell; Thomas Harris Devonshire
Geoghegan, Michael John, jun.	Walter Ephraim Goatly
Hamber, Frederick Marsh	Frederick Dimsdale
Hammond, Henry, jun.	Henry Hammond, sen.
Hearn, Henry	Hearn and Nelson
Hewitt, William Henry	Robert Needham; John Hewitt
Holmes, George Penfold	Edward Carleton Holmes
Huxley, Frederick	John Buck Lloyd
James, Thomas	William Fowler
James, Thomas Lloyd	Edward Wallwyn James
Jones, Thomas	Henry Maybery
Kent, Edmund, jun.	Edward Kent, sen.
Kent, Thomas Russel	Bezer Blundell; Park Nelson
King, William Henry	George Barnard Townsend
Kitchener, William Orbell	William Cripps Kitchener
Lett, Edward	Richard Grose Burfoot; Edward Thompson
Mander, Charles John	James Josiah Millard
Marshall, John Stewart	Ralph Leigh
May, Henry	John Fraser
Newman, Charles	John Birks
Palmer, Robert, jun.	George Granside; Robert Palmer
Phillips, Thomas	Mark Beauchamp Peacock

Names of Candidates.

To whom Articled, Assigned, &c.

Phillips, William Henry	Thomas Moss Phillips
Ponsonby, John	James Hilton Hulme
Poole, Fenwick Thomas	Thomas Evered Poole
Preston, John	Thomas Eastham
Rackis, William	Edward George Craig
Reynolds, Reginald	Thomas Edwards; Charles Edward Ward
Rodd, Richard Robinson	Richard Rold
Slater, William, jun.	William Slater
Smith, Sidney Philip	Richard Edgar Smith; Thomas Henry Street
Smith, William	Henry Davies
Stansfield, John	Thomas Edward Hammerton
Stevenson, James Richard	Charles Falcon
Steward, Frederick Fisher	Henry Perry; Wilson Perry; George Helder
Stubbs, Edward Phillips	Frederick Scudamore
Taylor, Mathew William	Richard William Fletcher Beioley; Henry Wellington Vallance; William Cox
Thomas, William Thomas	Lewis Morris
Turner, George	William Anthony Deane; Francis Jos ^{ph} Cotton
Wates, Edward	George Crafter; Edward Browne Hook
Weld, Samuel	George Peter De Rbe Philipe
Welford, Thomas William	Edward Dawson Welford
Wilton, Thomas	John Willim
Wratislaw, Theodore Marc	William Ferdinand Wratislaw; Chas. Petit Allen William Ferdinand Wratislaw

See the Questions, p. 96, ante.

PERPETUAL COMMISSIONER.

Appointed under the Fines' and Recoveries' Act, with date when gazetted.

Boodle, John, Southampton, in and for the Town and County of the Town of Southampton, also in and for the County of Hants. June 18.

MASTERS EXTRAORDINARY IN CHANCERY.

From April 20th, to June 18th, 1852, both inclusive, with dates when gazetted.

Hadfield, Samuel, Manchester. June 4.
Peacock, William Harrison, Barnsley. June 15.
Southern, James, Altrincham. June 8.

DISSOLUTIONS OF PROFESSIONAL PARTNERSHIPS.

From May 25th, to June 18th, 1852, both inclusive, with dates when gazetted.

Atkinson, John Glenton, and George Archer Smith, Peterborough, Attorneys and Solicitors. June 8.

Edmonds, Charles Henry, and John Jones, Eldon Chambers, Devereux Court, Temple, Attorneys and Solicitors. June 1.

Lamb, George, James Brooks, William Brooks, William Challis, and Walter Charles Metcalfe, Basingstoke and Odiham, Attorneys and Solicitors (so far as regards the said Walter Charles Metcalfe). June 15.

Reeves, Orlando, Archibald Reeves, and Henry Channing, Taunton, Attorneys and Solicitors (so far as regards the said Orlando Reeves and Archibald Reeves). June 8.

STATE OF LAW BILLS IN PARLIAMENT.

House of Lords.

Suitors in Chancery Relief. Report of Amendments to be received.

Equity Jurisdiction Improvement.—Lord Chancellor. Commons Amendments to be considered.

County Courts' Extension.—Commons Amendments agreed to with Amendments.

District Courts of Bankruptcy Abolition.—Lord Brougham. For 2nd reading, June 28.

Enfranchisement of Copyholds.—Lord Cranworth. *Passed.*

Patent Law Amendment.—Lord Brougham. *Passed.*

Corrupt Practices at Elections.—Marquis of Lansdowne. *Passed.*

Trustees Act Extension.—Lord Cranworth. *Passed.*

Commons' Inclosure Acts' Extension.—The Lord President. For 3rd reading, June 25.

Ecclesiastical Courts (Criminal Jurisdiction).—Lord Wodehouse. *Deferred.*

County Rates.—Earl of Chichester. In Committee, June 25.

Nisi Prius Officers.—Lord Campbell. For 2nd reading, June 25.

Poor Law Board Continuance.—In Committee, June 25.

Passengers' Act Amendment.—Earl of Desart. *Passed.*

General Board of Health.—Earl of Shaftesbury. *Passed.*

Turnpike Trusts Arrangement.—Lord Colchester. *Passed.*

Friendly Societies, No. 2.—The Lord Privy Seal. For 2nd reading, 25th June.

House of Commons.

Masters in Chancery Abolition. — *Passed with Amendments.*

Vice-Chancellor Turner.*Cambray v. Draper.* June 5, 1852.

SUIT BY RESIDUARY LEGATEE AGAINST EXECUTORS. — INDEMNITY. — COSTS OF SUIT.

Executors are entitled to their costs of suit on behalf of the residuary legatee for payment of the residue where it does not appear they have acted oppressively in requiring an indemnity before parting with their testator's assets.

*Therefore, where it appeared their testator had acted as administrator to his brother and as executor to his father, and had, it was suggested, shortly before his death, entered into a large contract, they were allowed their costs where they had refused to pay over the residue (about 3,000*l.*) unless a sum of 1,000*l.* were suffered to remain invested for 20 years to answer any claims that might arise, and it appearing the plaintiff's solicitor had assented to this, although the plaintiff afterwards declined to accede thereto.*

THE testator, Mr. Cambray, died in August, 1848, having by his will appointed the defendants his executors, and his wife, the plaintiff, residuary legatee. In April, 1849, the plaintiff applied to the defendants for the residue of the estate, amounting to about 3,000*l.*, but they refused to pay it over, unless they were allowed to retain 1,000*l.* for 20 years, to meet any claims that might be made against the estate. It appeared that the testator had acted as administrator to his brother and executor to his father. The plaintiff's solicitor had agreed to the defendants' proposal, but the plaintiff subsequently refused to accede to the retention of the fund for more than three years, and on their then declining to pay over the residue this bill was filed. All the debts were reported by the Master to have been paid and no claims had been made on the estate.

Russell for the plaintiff; *Bacon* and *Speed* for the defendants, applied for their costs of suit.

The *Vice-Chancellor* said, that in accordance with the rule of executors being entitled to costs where a legatee refused to release, they were not bound, as there might be claims, to part with the assets without an indemnity, and had therefore a right to insist on protection. In the present case there was a suggestion that the testator had shortly before his death entered into a large contract, and it also appeared he had acted as administrator to his brother and as executor to his father. Although the indemnity required was larger than necessary, yet the plaintiff's solicitor had agreed to the proposal, and they could therefore be said to have insisted on the indemnity oppressively. The executors would accordingly be allowed their costs.

Vice-Chancellor Kindersley.*Waldron v. Sloper.* June 1, 1852.

CLAIM.—EQUITABLE MORTGAGEE.—LACHES IN NOT RETAINING POSSESSION OF DEPOSITED DEED.

A mortgagee of an estate deposited his mortgage-deed with the plaintiff as a security for a debt, but afterwards borrowed it on an undertaking under the pretence of its being necessary on the sale of the estate to which it related, and upwards of a year afterwards he deposited it with P. as a security for a loan: Held, dismissing with costs a claim for the payment out of Court of a sum paid in in respect of the mortgagee's share of the purchase-money, that the plaintiff had disentitled himself to relief, by his laches in not peremptorily demanding restitution of the deed.

THIS was a claim for the payment out of Court to the plaintiff of a sum of 766*l.* It appeared that a Mr. Sloper had mortgaged certain estates to a Mr. Sievewright and afterwards to a Mr. Matthews, and that Matthews had deposited the mortgage-deed with the plaintiff to secure the repayment of a debt to him of 3,300*l.* Matthews in April, 1842, applied to the plaintiff to borrow the deed, stating the estates to which it related were to be sold and it was necessary to complete the title, and it was accordingly lent upon an undertaking. In 1846, Matthews became bankrupt, the deed never having been returned to the plaintiff, but having as it appeared been deposited with a Mr. Pinkney as a security for moneys advanced by him to Matthews. Upon the sale of the estates, Matthews' share was paid into Court, whereupon this claim was filed.

Bethell and *Rogers* for the plaintiff in support; *Stuart* and *Shapter* for Mr. Pinkney, contra; *Giffard* for the assignees; *J. T. Wood* for other parties.

The *Vice-Chancellor* said, that as the deed had not been deposited with Mr. Pinkney till more than a year after the plaintiff had lent it to Matthews, he had been guilty of great negligence in not peremptorily demanding its restitution before that time, and the claim must therefore be dismissed, with costs.

Vice-Chancellor Parker.*Howard v. Wheatley.* Feb. 28; May 24, 1852.

JOINT-STOCK COMPANIES' WINDING-UP ACT. —RIGHT OF CREDITOR AGAINST PUBLIC OFFICER TO PROVE AGAINST DECEASED MEMBER'S ESTATE.

A creditor obtained a judgment in April, 1848, against the public officer of a joint-stock banking company, of which the testator was a registered member until his death in December, 1847. A decree for the administration of his estate was made in December, 1848, and the creditor presented

his petition for leave to go in under the decree, to prove the amount of his judgment debt: Held, that the case was governed by the 6 & 7 Geo. 4, c. 46, and that therefore it was necessary to show that the petitioner had proceeded ineffectually under sect. 13, against the members for the time being of the partnership, and this not having been shown to have been done, the petition was accordingly dismissed, but without costs.

THIS was a petition on behalf of Mr. George Wilson, who had, in April, 1848, recovered judgment in an action at law against the public officer of the Newcastle, Shields, and Sunderland Union Joint-Stock Banking Company, for leave to go in before the Master and prove as a creditor for the amount of the judgment debt under the decree, which had been made in December, 1848, in this suit, for the administration of the estate of the testator, Joseph Elder, who was, up to the time of his death in December, 1847, a registered member of the company.

Mains and Toller for the petitioner in support; *Kenyon Parker, W. Hislop Clarke, and W. D. Lewis*, contra.

Cur. ad. vult.

The Vice-Chancellor said, that independently of the 6 & 7 Geo. 4, c. 46, the case would have admitted of no doubt, and that, on the testator's death, his liability on the contract would have ceased, but his assets have continued liable to the debt due to the petitioner. In this case, however, the liabilities were regulated by the statute, which, by the 13th section, provided that a creditor of the partnership was in the first instance to issue execution against the members "for the time being" of the co-partnership, or as decided by the Court of Exchequer in *Dodgson v. Scott*, 2 Exch. R. 457, at the time of the execution, and upon its proving insufficient, execution might then be issued against certain persons who had ceased to be members before that time. It was therefore necessary to show that this liability could not be satisfied by proceeding against those who were members of the partnership at the time, and who were primarily liable,¹ and the proviso was applicable to the case of a deceased, as much as to that of a retired member. As this had not been shown, there could be no order on the petition, which must therefore be dismissed, but without costs.

Court of Queen's Bench.

Howe v. Barber. May 8; June 2, 1852.

TAXATION OF COSTS. — ALLOWANCE TO PLAINTIFF EXAMINED AS WITNESS ON HIS OWN BEHALF.

Held, (*discharging without costs a rule for the review of the taxation*.) that the Master had properly allowed to the plaintiff a sum of 40l. for subsistence money between

the date of the issuing of the writ and the trial where it appeared that he was a necessary and material witness, and that without his evidence it would have been necessary to issue a commission for the examination of witnesses abroad, and the plaintiff had accordingly remained in this country for the purpose.

A RULE nisi had been obtained in this case on April 17 last, for the review of the taxation of the plaintiff's costs in this action, which was brought by the plaintiff, a master mariner, to recover from the defendant for his work and labour in navigating his vessel from Valparaiso to Liverpool. It appeared that the plaintiff had been engaged at Valparaiso by the defendant's agent there, upon the death of the former master, to bring the vessel home, but that the defendant upon its arrival repudiated his services and refused to remunerate him for them; and the plaintiff thereupon brought this action and obtained a verdict. The Master, on taxation, had allowed a sum of 40l. to the plaintiff, who had remained in this country from the Isle of Man, and had been examined as a witness in support of his claim, for subsistence from the date of the writ on September 29 last, to the day of trial on the following 26th Jan.

Lush showed cause against the rule; *Unthank*, contra.

Cur. ad. vult.

The Court said, that although the practice of allowing costs to the successful party, who was examined as a witness, might lead to inconvenience, the Court could not lay down the rule that such costs could in no case be recovered, as a party might be both a necessary and a material witness, and his attendance might not only obtain justice for himself, but also lessen the expenses, by obviating the necessity for the attendance of other witnesses, or of issuing a commission to examine them abroad. In the present case the plaintiff could only make out his claim by his own evidence or by issuing a commission, and having therefore remained here for the purpose of being examined, the Master had properly made the same allowance for his expenses as he would have made to a third person who might have been detained under similar circumstances, (*Berry v. Pratt*, 1 B. & C. 276.) The rule would therefore be discharged, without costs.

Broughton v. Jackson. April 23, 1852.

ACTION FOR FALSE IMPRISONMENT.—PLEA OF JUSTIFICATION.

To an action for false imprisonment and putting the plaintiff in irons, the defendant justified in his plea that he was in command of a ship in the Royal Navy of which the plaintiff was steward, and as such had access to the defendant's cabin, out of a desk in which moneys had been stolen, and that he believing no other person could have had access thereto without his knowledge, confined the plaintiff, and afterwards, on investigation, discharged him: Held, dis-

¹ See *Barker v. Buttriss*, 7 Beav. 134.

charging a rule to enter the verdict for the plaintiff non obstante veredicto, that as the plea showed a reasonable and probable cause for suspicion, it was a sufficient answer to the action, and that as the plaintiff had not new assigned, the putting him in irons must, after verdict, be taken to be a reasonable mode of detention.

THIS was a rule nisi granted on January 15 last, to enter judgment for the plaintiff non obstante veredicto in this action, which was brought to recover damages for false imprisonment of the plaintiff and putting him in irons. The defendant pleaded that he was lieutenant in the Royal Navy, and in command of the *Lucifer*, of which the plaintiff was steward, and as such had access to the defendant's cabin and the charge of the goods therein, and that two sum of money had been stolen from a desk in the cabin, and that he believing no other person could have had access to the cabin without his knowledge, confined him until the circumstances could be investigated, but that after making such investigation he had discharged him. The defendant having obtained a verdict on this plea, this rule had been granted.

Keating and *Pigott* now showed cause on the ground the plea was a sufficient justification for the imprisonment; *Prideaux* in support of the rule.

The Court said, that as the plea stated sufficient facts to raise a reasonable and probable ground for the defendant's suspicion, and it had not been alleged that any person had access to the cabin on whom suspicion could have attached, the plea was sufficient. As to the putting in irons, that must, after verdict, be taken to be a reasonable mode of detaining the plaintiff until the case was investigated, as the plaintiff might, if there had been any excess, have new assigned. The rule would therefore be discharged.

June 18.—*Stewart v. Anglo Californian Gold Mining Company*—Judgment for the defendants.

— 18.—*Regina v. Inhabitants of the County of Southampton*—Judgment for the Crown.

— 18.—*Regina v. Same*—Judgment for the Crown.

— 18.—*Regina v. Same*—Judgment for the defendants.

— 18.—*Mackenzie v. Skigo and Shannon Railway Company*—Judgment for the plaintiff.

— 18.—*Regina v. Justices of Middlesex*—Rule discharged.

— 18.—*Regina v. Commissioners of Insolvent Debtors' Court*—Rule refused for mandamus.

— 18.—*Martin v. Nicholls*—On demurrer to plea, judgment for defendant.

Common Pleas.

Ricketts v. East and West India Docks and Birmingham Junction Railway Company.
April 27, 1852.

RAILWAY COMPANY.—LIABILITY FOR INSUFFICIENT FENCES ADJOINING RAILWAY.—SHEEP KILLED BY TRAIN.

Sheep strayed into a field adjoining the defendants' railway, and thence on to the line, and were killed: Held, that as the defendants' liability under their act was only to repair the fence adjoining their railway, that duty was only enforceable by the owner and occupier of such adjoining close, and that the plaintiff being a mere trespasser, had no right of action on the breach of duty. In an action to recover compensation for the loss of the sheep, by reason of the insufficient fence adjoining the railway, the defendants were held entitled to judgment.

THIS was an action to recover compensation for the loss of the plaintiff's sheep on the defendants' railway. It appeared that the sheep were in the plaintiff's close, and had escaped by reason of the insufficient fencing into a field belonging to the Great Northern Railway Company, immediately adjoining the defendants' line, and which was not fenced off therefrom, and thence on to the railway, and were killed by a train. The defendants demurred to the declaration, but by arrangement, the facts were turned into the form of a special case for the opinion of the Court.

T. Chitty for the plaintiff; *Joseph Brown* for the defendants.

The Court said, the defendants' liability to repair the fence of the adjoining close under their Act of Parliament was in respect of the owner and occupier of the close. It appeared, however, that the sheep had got on the railway, and been killed by the defect of the fence of this close between the plaintiff's field, and which the occupiers thereof were bound to repair, and therefore, as the plaintiff had no interest in that close, nor any licence from the occupiers to put his sheep there, he was a mere stranger, and not entitled to recover for damages: *Pomfret v. Ricroft*, 1 Wms. Sand. 322, note (b). The defendants were accordingly entitled to judgment.

June 22.—*Belshaw v. Bush*—Judgment for defendant on demurrer to replication.

— 22.—*Fisher v. Bell*—Judgment for the plaintiff.

— 22.—*Cannon v. Remington*—Plaintiff held not entitled to costs of issue in this action of formedon.

— 22.—*Haydon v. Templeman*—Appeal from Somersetshire County Court at Crewkerne, dismissed with costs.

Court at Exchequer.

Holmes v. Sinsmith. May 27, 1852.

ACTION AGAINST STAKEHOLDER.—AGREEMENT UNDER WHICH MATCH WAS TO TAKE PLACE.—STAMP.—FRAUD.

Upon the trial of an action to recover a sum

of money deposited with the defendant, as stakeholder on a trotting match between the plaintiff's horse and a horse belonging to A. T., an agreement under which the match was to take place, was admitted in evidence as part of the proof of a fraud which had been practised on the plaintiff, by passing off another horse as A. T.'s, and the objection was overruled of its not being stamped: Held, that it had been properly admitted, and a rule nisi to enter a nonsuit was discharged.

THIS was a rule nisi obtained on April 17 last, to enter a nonsuit on leave reserved. The action was brought to recover the sum of 100*l*., which the defendant held as stakeholder, on a trotting match between the plaintiff's horse and that of a Mr. Alexander Taylor, under a written agreement. It appeared, however, that Taylor had fraudulently passed off a celebrated American trotter, under another name, whereby the plaintiff's horse lost. Notice was then given to the defendant not to hand over the stakes, and upon his having done so on Taylor's indemnity, the present action was brought. On the trial before Cresswell, J., at the Liverpool Assizes, the agreement was admitted in evidence, although without a stamp, and the plaintiff obtained a verdict subject to this motion.

Knowles, E. James, and T. Jones, showed cause against the rule, which was supported by Wilkins, S. L., and Henderson.

The Court said, that as the agreement was not intended to be set up as a valid instrument, but was merely put in as a part of the proof of the fraud concocted against the plaintiff, it had been properly admitted, and the rule was therefore discharged.

Exchequer Chamber.

Regina v. Nash. May 29, 1852.

INDICTMENT FOR FORGING AND UTTERING TRANSFER OF RAILWAY SHARES.—EVIDENCE OF TRANSFER.—INTENT TO DEFRAUD.

A prisoner was indicted for forging and uttering, with intent to defraud, a transfer of railway shares. The shares had been transferred to H. (whose name was forged) by the original holder: Held, that the register of shareholders under the seal of the company was properly received in evidence to

show H. was a shareholder, without proving the transfer to him from the former holder, and that the offence was complete, and sufficient to support the indictment if the prisoner intended to defraud some one, which might have been the consequence of his act, and the conviction was affirmed.

THIS was an indictment against the prisoner for having forged and uttered, with intent to defraud a transfer of 196 shares in the Waterford, Wexford, Wicklow, and Dublin Railway way Company. On the trial before the Recorder, the register of shareholders under the seal of the company, was received in evidence, to show that a Mr. Peter Hanstock, whose signature the defendant had forged, and to whom the shares in question had been transferred by the original holder, Captain Owen, was registered as a shareholder, without proving such transfer. It appeared that the shares were of no marketable value, and that the transfer to Mr. Hanstock was without consideration. The jury were directed, that it was not necessary to find an intent to defraud any one in particular, but that they must have in view some person who would necessarily or possibly be defrauded in consequence of the prisoner's act, and that it was for them to say whether Hanstock, as the party to whom the dividends (if any) would legally be payable, might not have been defrauded if the circumstances of the company had improved, or whether the company might not have been defrauded if they had been led by the forgery to insert the name of another person on the register.

D. D. Keane, for the prisoner, contended that the register was not properly received in evidence, and that it was necessary to prove the transfer to Mr. Hanstock.

Ballantine in support of the conviction.

The Court said, that the register had been properly admitted, and that it was not necessary to go further in Hanstock's title, and that the offence was complete if the prisoner intended to defraud some one, which might have been the consequence of his act, and the conviction was affirmed.

June 16.—*Fishmongers' Company v. Dimsdale*—On error from Common Pleas, *venire de novo*.

— 16, 17.—*Great Northern Railway Company v. Harrison and others*—Judgment of the Court of Common Pleas affirmed.

— 21.—*Heath v. Unwin*—*Venire de novo*.

ANALYTICAL DIGEST OF CASES,

REPORTED IN ALL THE COURTS.

Courts of Equity.

[For the previous Sections of the Digest in this Volume, see

Privy Council: Appeals, p. 17.

House of Lords: Appeals, p. 38.

Courts of Equity:

Construction of Statutes, p. 104.

Law of Attorneys and Solicitors, p. 125.

Contributories under the Winding-up Act, p. 143.]

LAW OF TRUSTEES.

APPOINTMENT OF NEW TRUSTEES.

1. *Instead of lunatic*.—Order made under the

Trustee Act, 1850, appointing a new trustee and vesting the trust premises in him jointly with the continuing trustees, in a case where one of three trustees was lunatic, although the will contained a power to appoint new trustees. *In re Davies*, 3 M'N. & G. 278.

2. *Settlement.—Parties beneficially interested.*—On a petition under the Trustee Act, 1850, for the appointment of new trustees of a settlement, the beneficial interests under which had been made the subjects of marriage settlements: *Held*, that the original *cestuis que trustent*, their husbands and wives, and the trustees of their settlements, sufficiently represented all the parties beneficially interested. *In re Smyth's Trust*, 2 De G. & S. 781.

3. *Effect of order vesting estate in new and continuing trustee.*—Where there are several trustees, one of whom is out of the jurisdiction, and a new trustee is appointed by the Court in his place under the Trustee Act, 1850, an order vesting the trust estate in the new and continuing trustees will, under the 10th section of that act, have the effect of severing the joint-tenancy.—*Semble.* *In re Watt's Settlement*, 9 Hare, 106.

4. *Jurisdiction.—Where donee of power.*—The Court has not jurisdiction under the Trustee Act, 1850, to take away the power of appointing new trustees from the donee of the power, where the donee is capable of exercising, and willing to exercise, the power, although such donee may have disclosed an intention or desire to exercise his power corruptly. *In re Hodson's Settlement*, 9 Hare, 118.

5. *Order where there are continuing trustees, without the vesting order.*—Form of order appointing a trustee in the place of a trustee out of the jurisdiction, where there is another and continuing trustee, and the vesting order is not made. *In re Plyer's Trust*, 9 Hare, 220.

6. *Copyhold.—Form of order.*—Form of order appointing a new trustee of a copyhold estate, and appointing a person to complete the assurance of the estate to such new trustee. *In re Heys' will*, 9 Hare, 221.

BANKRUPT.

Indicted for non surrender.—A power to appoint a new trustee in the place of a trustee who should become incapable to act, contemplates the personal incapacity of such trustee; and therefore a trustee who had become bankrupt, and been indicted for not surrendering to the fiat, and had absconded, was held not thereby to have become "incapable" of acting in the trust, within the meaning of the power. *In re Watt's settlement*, 9 Hare, 106.

BREACH OF TRUST.

1. *In advancing trust funds without security.*—*Objection as to want of proof of interest of co-plaintiffs.*—By an ante-nuptial settlement, a sum of stock was settled upon certain trusts for the benefit of the wife and children of the marriage. The settlement contained powers for the trustees to sell the trust fund and re-invest the proceeds in Government or real se-

curities. By a contemporaneous memorandum, which was executed by the father, the wife, and the intended husband, and indorsed upon the deed of settlement, the trustees were empowered to advance any portion of the trust fund to the owners or lessees of Vauxhall Gardens, upon mortgage either as first, second, or third mortgages, for such time and at such rate of interest as the trustees might think fit. The trustees lent the whole of the trust fund to three persons, who afterwards became the joint proprietors of and partners in Vauxhall Gardens, but no written security was then taken by the trustees. One of the three proprietors of Vauxhall Gardens subsequently retired from the partnership. Some time afterwards, the trustees obtained a covenant from the two remaining partners to surrender the Vauxhall Gardens by way of mortgage, subject to two prior charges. This mortgage eventually proving a wholly inadequate security for the trust fund, a suit was instituted to compel the trustees to reinstate the stock: *Held*, that, under the circumstances, the trustees must be considered in having made the advance without security, and in having afterwards accepted the covenant of two only of the three joint debtors, to have misapplied the trust fund, and that they had subjected themselves to the liability of replacing it.

The bill was filed by the wife and children of the marriage, but there was no evidence in the suit that the children were in fact the children of the marriage. The answer neither admitted nor denied the allegation in the bill to that effect. An objection by the defendants, taken for the first time on the re-hearing, that it did not appear that all the parties, co-plaintiffs, were interested in the suit, and that the bill ought to have been dismissed, was overruled.

Whether, if the objection had been taken in proper time and in proper form, it would have been valid. *Quære*.

If the objection had been open to the defendants on the re-hearing of the cause, an affidavit to repel it would have been admissible. *Fowler v. Reynal*, 3 M'N. & G. 500.

2. *Lapse of time.—Laches.*—A testator, who died in 1796, gave his personal estate to his widow for life, with remainder to B. B. died in 1826, and the widow in 1849. The plaintiffs then filed a bill against the representatives of the executors, to make them liable for investing in 5 per cents., instead of in consols, &c. In 1837, the plaintiffs had notice of the state of the investment: *Held*, that they were barred by laches and lapse of time. *Browne v. Cross*, 14 Beav. 105.

3. *Improper investment of fund.*—An estate of the value of 80,000*l.* was subject to a first mortgage of 40,000*l.*, and to two others for 11,000*l.* and 6,800*l.*, and between the second and third there was a dispute as to priority. A trustee advanced 1,908*l.* trust money on the security of an assignment of an equal amount of the 6,800*l.*: *Held*, that this was a breach of trust. *Norris v. Wright*, 14 Beav. 291.

4. *Liability for insufficient security.*—Trustees were directed by a will to place the trust moneys in the public funds, or on some good and approved freehold or leasehold securities, at interest. The trustees, acting *bond fide*, had, in 1828, upon the report of a surveyor, (who had valued the property at 3,500*l.*, and the annual rental at 175*l.*), lent 2,600*l.*, part of the trust moneys, upon a mortgage, with powers of sale, of the valued property, and which consisted of four freehold messuages, at the time in an unfinished state, the actual yearly rent of which being only 105*l.* The mortgagor having become insolvent, the trustees sold the property in 1836, which then realised less than the amount lent by 353*l.* 4*s.* 2*d.*; and that sum was lost to the estate. In a suit by a *cestui que trust*, the Court declined to charge the trustee with the loss, and allowed them their costs of suit, and their costs, charges, and expenses. *Jones v. Lewis*, 3 De G. & S. 471.

COPYHOLD.

Tender of deed appointing attorney to surrender.—The tender of a notice requiring a trustee to surrender a copyhold, is not sufficient, within the 17th section of the Trustee Act; but the tender of a deed appointing an attorney to surrender may possibly be sufficient. *Rowley v. Adams*, 14 Beav. 130.

And see *Appointment of New Trustee*, 6; *Married Woman*.

COSTS.

1. *Of proceedings in respect of sufficiency of security.*—Trustees had lent money on a technically insufficient security. In the Master's Office, they entered into evidence to prove its sufficiency, but failed; and they afterwards presented a petition for calling in and investing the money. This was done, and no loss occurred; *Held*, that the trustees were entitled to their costs of both proceedings. *Royds v. Royds*, 14 Beav. 54.

2. *Suit to enforce pre-existing interests.*—A party becoming a trustee under a deed creating interests already existing, may be liable to costs in a suit instituted to enforce such pre-existing interests in the trust property. *Heap v. Tonge*, 9 Hare, 105.

3. *Trustee and cestui que trust.—Adverse claims to trust fund.—Retainer of trust fund.*—A suggestion by the trustees of a fund, that the administrator of one of the *cestui que trusts*, who, in that character, was entitled to a distributive share of the fund, had unfairly obtained the letters of administration under which he claimed such share, is no defence in this Court to the claim of the administrator; nor is it a defence for trustees to suggest that a deed, under which the plaintiff derives his title from the *cestui que trust*, was founded on mistake, or is otherwise subject to be displaced; for it is contrary to the course of the Court to direct an inquiry as to the validity or invalidity of a deed, upon the suggestion in the answer of defendants, the trustees of the fund to which it relates, where the ascertainment of the validity or in-

validity of the deed is not essential to the safety of the defendants; and the fact of a bill having been filed to set aside the deed under which the claim is made, or exclude the fund in question from its operation, is not a ground upon which the trustees can resist the legal title to receive the fund; for the Court cannot give the plaintiff in such other suit the benefit of an injunction to protect the fund upon the suggestion in the answer of the trustees; but the existence of such other suit entitles the trustees to retain such a portion of the trust fund as may be sufficient to answer their costs of such other suit. *Devey v. Thornton*, 9 Hare, 222.

Cases cited in the judgment: *Watkins v. Brent*, 1 Myl. & Cr. 97.

4. *Acting under advice of counsel.*—It is not, necessarily, sufficient, to entitle trustees to their costs of a suit, that they have acted under the advice of counsel. *Devey v. Thornton*, 9 Hare, 232.

DISCHARGE OF TRUSTEE.

Jurisdiction.—A trustee paying into Court a sum of money under the Trustee Relief Act, (10 & 11 Vict. c. 96), although such sum may be less than the amount of the trust fund in his hands, is discharged as to the money so paid in; and after such payment the parties beneficially interested can proceed only under the Act to recover the money so paid in; and the ordinary jurisdiction of the Court, as against the trustee, is confined to the balance which may remain due from the trustee in respect of the trust fund after such payment. *Goode v. West*, 9 Hare, 378.

JURISDICTION.

1. *Lunatic.*—*Reference to Master.*—The Lord Chancellor declined, on a petition under the 13 & 14 Vict. c. 60, s. 5, to order the transfer of funds standing in the joint names of the lunatic and another, to the party claiming such transfer, without a previous reference to the Master. *In re Were*, 3 M'N. & G. 233.

2. *Lands of lunatic in Ireland.*—The Trustee Act, 1850, does not give to the Lord Chancellor of Great Britain, sitting in lunacy, jurisdiction over lands in Ireland. *In re Davies*, 3 M'N. & G. 278.

And see *Appointment of New Trustee*, 4; *Discharge of Trustee*.

LIABILITY.

Lynch's Act, effect of on liability of trustees as to propriety of investment.—Lynch's Act (4 & 5 W. 4, c. 29,) only relieves a trustee from any liability in respect of an investment in Ireland instead of England, and therefore where, upon petition, under the act, the Court sanctioned an investment which was made without proper evidence of value, and without the consent of the necessary parties, and there was a loss, the trustees were held liable for the breach of trust. *Norris v. Wright*, 14 Beav. 291.

Case cited in the judgment: *Ex parte French*, 7 Sim. 510.

LIMITATIONS, STATUTE OF.

Heir at Law and personal representative.—*Petition and report in lunacy.*—A petition in lunacy, after the death of the lunatic, by his committee, and a reference to the Master thereon, followed by a report, finding that a sum of money had been expended by the committee in maintenance of the lunatic, is not a proceeding which will take the claim of the committee out of the Statute of Limitations, as against the heir-at-law of the lunatic, who was not a party to the application. *Wilkinson v. Wilkinson*, 9 Hare, 204.

Cases cited: *Marten v. Whicelo*, 1 Cr. & Ph. 257; *Putman v. Bates*, 3 Russ. 188.

LUNATIC.

See *Appointment of new Trustees*, 1; *Jurisdiction*, 1, 2.

MARRIED WOMAN.

Refusing to convey copyholds to purchaser under decree.—*Vesting order.*—A copyhold was vested in a married woman. It was sold under a decree which ordered all proper parties to join. She stated in writing that she never would surrender: *Held*, that the case came within the Trustee Act, and a vesting order was made. *Rowley v. Adams*, 14 Beav. 130.

MORTGAGE.

1. *Vesting order in executors of mortgagee.*—Where a mortgagee in fee (who has never been in possession or in receipt of the rents and profits) has died intestate as to the mortgaged hereditaments, and his heir cannot be found, the Court may, under the Trustee Act, 1850, make an order vesting the legal estate in his executors. *In re Boden's Trust, ex parte, Peach*, 1 De G., M'N. & G. 57.

2. *Unknown heir.*—*Unsatisfied mortgage.*—The 19th section of the Trustee Act, 1850, does not enable the Court, on the petition of the administrator of a mortgagee in fee, who has died intestate, and whose heir is unknown, to vest the mortgaged estate in such administrator, subject to the equity of redemption,—the mortgage debt remaining unpaid. *In re Mayrick's Estate*, 9 Hare, 116.

3. *Second.*—*Without taking the legal estate.*—Whether a trustee is justified in lending trust-money on a second mortgage, without obtaining the legal estate, *quære?* *Norris v. Wright*, 14 Beav. 291.

MULTIFARIOUSNESS.

Petition in respect of several lots sold under decree.—Where an estate is sold in lots under a decree, one petition under the Trustee Act, as to the several lots, is not multifarious. *Rowley v. Adams*, 14 Beav. 130.

PARTNERSHIP.

Contract that survivor may purchase partnership property.—*Exercise of power to purchase.*—*Trustee and cestui que trust.*—Trustee Act, 1850.—*Infant.*—*Petition or motion.*—*Suit.*—Two partners in a brewery, part of the property of which consisted of freehold and copy-

hold estates, covenanted that the survivor should have the option of purchasing the share of the deceased partner in the property of the partnership, at a valuation; and the survivor accordingly exercised such option, and paid to the executors of the deceased partner the amount at which his share was valued. The share of the deceased partner and his legal estate in part of the freehold and copyhold estates of the partnership descended, or became vested in his infant heir; but the Court refused, upon petition or motion under the Trustee Act, 1850, without suit, to declare the infant heir a trustee for the surviving partner. *In re Burt*, 9 Hare, 289.

PAUPER.

A claimant allowed to proceed *in forma pauperis* under the Trustee Relief Act. *In re Money*, 13 Beav. 109.

POWER.

1. *Title.*—*Vendor and Purchaser.*—A power of sale in a settlement, was given to A. and B, the trustees to preserve contingent remainders, and the survivors of them and the executors and administrators of the survivor: *Held*, that the trustees appointed by the Court in the place of A. and B. could not exercise the power. *Newman v. Warner*, 1 Sim. N. S. 457.

Case cited in the judgment: *Townsend v. Wilson*, 1 Barn. & Ald. 608.

2. *Fit and proper investment.*—*Onus probandi.*—It is the duty of a trustee who executes a power, to show that he has complied with the exigencies required by it. So where he varies the investment of the trust fund, the burden of proof lies on him to show, that it is a fit and proper investment. *Norris v. Wright*, 14 Beav. 291.

PURCHASER.

By whom petition for vesting order to be presented?—*By plaintiff or purchaser.*—Whether, where a purchaser has paid his purchase money into Court, the petition under the Trustee Act, should be presented by the plaintiff or the purchaser, *quære?* But *held*, that the objection might be removed by making them co-petitioners. *Rowley v. Adams*, 14 Beav. 130.

SALE OF ENCUMBERED ESTATES.

Pending suit.—*Effect of.*—“*Without prejudice.*”—Pending a suit to make trustees liable for the improper investment of trust monies on an Irish estate, the property was put up for sale under the Encumbered Estates' Act, and an order was made giving the trustees liberty to buy, which they did: *Held*, that this order did not relieve the trustees from any liability in the cause, although it was not expected to be made “without prejudice.” *Norris v. Wright*, 14 Beav. 291.

VESTING ORDER.

See *Appointment of New Trustees*, 3; *Married Woman; Mortgage*, 1; *Purchaser*.

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SATURDAY, JULY 3, 1852.  
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RESULTS OF THE SESSION. — LAW AMENDMENT ACTS.

SINCE our last publication, the Session of Parliament has not only been brought to a close, but the Parliament itself has been dissolved and the excitement of a general election has commenced.

It is certainly somewhat remarkable that the last Session of an expiring Parliament—after witnessing the accession of a new party to political power—should be distinguished, beyond all former Sessions within memory, for the number, variety, and importance of the legal changes sanctioned by the Legislature. The early expressed determination of the head of the administration, to avoid the introduction of any measures calculated to excite political discussion, no doubt, enabled the members of her Majesty's present Government to concentrate their attention upon the legal amendments contemplated or proposed by their predecessors in office, and the late Attorney-General (Sir A. Cockburn), in his place in the House of Commons, paid a very graceful tribute to the spirit, diligence, and success with which the present Chancellor and the other members of the Government connected with the Legal Profession, applied themselves to the subject of law amendment. It is but justice, too, to a Parliament, all the acts of which have not had our unqualified approval, to admit that the extensive alterations embodied in the various measures connected with the administration of the law were, for the most part, discussed, during the Session which has just terminated, with temperance, fairness, and a commendable absence of party spirit.

That the result has been, in the aggregate, gratifying to all who desire the improvement of our legal institutions, may at once

be readily conceded. The system of procedure in the Superior Courts of Common Law, as well as in the Courts of Equity, has been materially simplified and amended. The monster grievances of expense and delay which marred the utility of the Court of Chancery have been boldly grappled with by the Legislature. Suitors have been relieved for the future from the payment of many onerous and objectionable fees, and the principle that the salaries of judicial officers should be treated as a branch of national expenditure, and not thrown as a burthen upon a particular class of individuals, has been fully recognised. The Law with respect to Patents, to Wills, and to Trustees, has been amended; a practical measure has been passed for the enfranchisement of Copyholds; and even those recently established tribunals, the County Courts, have not been overlooked, but have partaken of the solicitude with which the Legislature regarded every proposal for the improvement of our judicial system.

Without any disposition or design to undervalue the legislative results of the bygone Session, from the operation of which we anticipate great benefit to the public, it may nevertheless be doubted whether too much was not undertaken to be well done. It is impossible to get rid of the apprehension that some of the measures to which we have adverted have been framed, and, what is still more dangerous, altered, without that mature deliberation which could alone afford a guarantee that the details will prove satisfactory in their practical operation. In more than one instance, the Lord Chancellor, whose efforts to master and perfect the legal measures before Parliament were unremitting, and have been universally acknowledged, frankly declared, that the alternative was forced upon him, either to reject measures the principles of which he

approved, or to accept them with imperfections of detail which the state of public business made it impossible to correct. In one of the latest debates of the House of Lords, upon a consideration of the amendments made by the Commons in the Equity Jurisdiction Improvement Bill, the Lord Chancellor is reported to have thus expressed himself:—

“He regretted to find that the House of Commons had struck out a clause which would have given power to a Court of Law to send a case for the opinion of a Court of Equity. He had proposed that, where a Judge found the objection raised that the plaintiff’s title was only equitable, then, instead of all the expense of the action being thrown away, the Judge should have power to ask the opinion of a Court of Equity whether the plaintiff had a right to the legal estate, and, if that Court held in the affirmative, the Judge might order a verdict to be entered for the plaintiff notwithstanding that objection. The Commons had also inserted a clause, of which he highly disapproved, taking away from Courts of Equity the power of sending cases for the opinion of Courts of Law—a power which would be peculiarly advantageous under the new system, because the Judge in his chamber with his clerk could at once settle the case. It was seldom that in equity you could get a pure decision upon a pure question of law unembarrassed by the facts; and the abolition of the power in question would add much to the expense to which parties would be put. But, though he disapproved of these amendments, he was not disposed to risk the Bill by asking their Lordships to refuse to agree to them.”

On the same evening, Lord Lyndhurst took occasion, upon the Commons’ amendments to the Suitors’ in Chancery Relief Bill being reported, to describe the mode in which alterations were introduced at the last moment, when practically there was no possibility of correcting the blunders of haste or ignorance, without perilling a measure in the general expediency of which all agreed. His lordship is understood to have said—

“He wished to put their Lordships on their guard against all bills which came up at a late period of the Session. He wished also to guard their Lordships against alterations introduced at the last stage. A bill went through various stages in order that from time to time the matter might be discussed; but sometimes it happened that a most important alteration crept in at the last stage, and in consequence individuals and the public were subjected to the very greatest injustice. He asked their Lordships to mark this case. There was a clause giving to a certain extent retirements to officers in the Court of Chancery. There was a proviso most properly added to the clause, that nothing

therein contained should affect the retirements given by former Acts of Parliament to officers of that Court. Nothing could be more just. Having accepted an office under an Act of Parliament, and each of those officers having held his office for a period of years, it was considered by them as a vested right. It was proper, therefore, in this bill, to put in a proviso, that what was stated with respect to retirements should not affect those persons. That proviso remained in the bill from the first to the second reading, through the Committee, and afterwards, he could not say when,—either on the report or on the third reading,—it was cut out. A person interested in the subject watched the progress of the Bill till it was in Committee, and took it for granted that the proviso was safe, whereas it was struck out; and what was the consequence? That gentlemen who, after 20 years’ service, had been entitled to retire on two-thirds salary, were reduced to a retirement of one-half that amount. There were difficulties in restoring the proviso. The difficulties were these—This was a money clause; the claim of privilege prevented their Lordships from interposing to apply a remedy. To prevent that injustice he should not have hesitated to go directly against the Bill, though many of its provisions had his approval. Fortunately, however, it was contrived by a side wind, by a species of machinery which he could not well describe, to remedy the injustice which had been proposed to be done.”

It is to be hoped that these complaints, made in soberness and without any alloy of party spirit, will cause more attention to be directed to what may be called the machinery of legislation, and that some regulations may be suggested during the next Session to afford a reasonable time for the consideration of every portion of that which is to have the force and binding authority of law. Be this as it may, with announcements such as those cited, from individuals eminently qualified by judgment and experience to deal with subjects of legal amendment, it is impossible to exclude the apprehension that the measures to which such observations were applicable, have not, in the shape in which they passed through Parliament, received that mature consideration essential to their efficiency and certainty of operation, and that their future working will disclose defects which a little more deliberation might have prevented.

It is proposed, shortly after they come from the Queen’s printer, to submit to our readers, as heretofore, the principal Acts of the Session, involving alterations in the law, with such remarks as may be deemed necessary or useful, and if in the course of those commentaries difficulties are pointed out, or objections suggested, it must not therefore be supposed that the writers are

insensible to the benefits conferred upon the jurisprudence of the country by the changes that have been introduced. The Session of 1852 will be memorable as the commencement of a new era, but the measures then adopted by the Legislature undoubtedly will require in a future Session to be amended and perfected. To point out the errors and defects which may hereafter be amended, is to assist those who desire that the Acts which have lately obtained the Royal Assent may not disappoint the expectations of the Legislature and the general public.

ALTERATIONS IN THE COUNTY COURT ADVOCACY CLAUSE.

It does not appear that any of our contemporaries were aware of the alteration made by the House of Lords in the advocacy clause of the County Courts Bill after it passed the House of Commons on the 17th June, and to which we adverted at p. 149, in our last Number. The clause was sent up to the House of Lords in the terms stated at p. 130, with various amendments in other parts of the bill. As then passed, it was provided in substance that an attorney of one of the Superior Courts, or a barrister retained by or on behalf of the party, or any other person by leave of the Judge, might address the Court. Thus the *right* of audience was conferred equally on barrister and attorney (which neither of them before possessed); but *leave* must be obtained for other persons. Now the altered clause stands as follows:—

After enacting that "it shall be lawful for the party to the suit, or for an attorney of one of her Majesty's Superior Courts of Record," the following words in the House of Commons' clause are omitted,—"*retained by or on behalf of the party*;" and this restriction introduced,—"*being an attorney acting generally in the action for such party, but not an attorney retained as an advocate by such first mentioned attorney*." Then the section continues as before,—"*or for a barrister retained by or on behalf of the party on either side*;" after which the following words are transposed from a subsequent part of the former clause to this place,—"*but without any right of exclusive or pre-audience*." The remainder of the clause remains unaltered, viz.,—"or by leave of the Judge for any other person allowed by the Judge to appear instead of the party to address the Court, but subject to such regulations as the Judge

may from time to time prescribe for the orderly transaction of the business of the Court."

It is remarkable, that of this very important alteration no notice whatever was given in either House; neither of the intention to propose it in the House of Lords, nor of the terms in which it was couched, nor of its being considered in the House of Commons. Turning to the several entries on the minutes of proceedings in both Houses, we find that in the House of Lords, on Thursday, 17th June, the entry is,—"*Commons Amendments to be considered on Monday next*." And on that day (the 21st), the entry is,—"*Commons Amendments considered (according to order), and agreed to, with Amendments; and Bill sent to the Commons*."

These last amendments of the Lords were not printed, and by whom they were proposed does not appear in the votes or proceedings.

Then in the House of Commons, the votes and proceedings of Thursday, 24th June, contains the following minute:—"Lords Amendments to Amendments *agreed to*." No notice in the Commons, however, was given of these amendments, or of their nature, or of the time when they would be considered. It appears, that on the same evening on which they were thus (without notice) "*agreed to*," they were returned to the House of Lords, and on the 24th the minute in that House is as follows:—"Returned from the Commons with the Amendments made by the Lords to the Amendments made by the Commons to the Bill, *agreed to*."

Now, it may be very proper that a verbal amendment, or the correction of an error or oversight, should be made without notice in the last stage of a bill; but it is surely unusual, and certainly improper, that a *substantial alteration* should be made without any previous notice even of the general nature of the alteration, to say nothing of the language in which it is proposed to effect it.

Here, if the parties who at the last moment induced some member of the House, on an erroneous representation, silently to introduce the alteration, have successfully effected their object, a very material injury may be inflicted on the suitor, for it never could be the intention of the Legislature to prevent an attorney who lives at a distance from the town where the County Court is held, from employing another attorney as his *agent*, in the manner which is invariably

recognised in the Superior Courts in regard to country attorneys and their London agents, or on writs of trial and inquiry before the sheriff, where the attorney resides at a distance or is unable to attend.

It will frequently be an unnecessary expense to compel the attorney "acting generally in the action," if he cannot attend personally, to prepare a brief and pay the fee of counsel, instead of instructing some other attorney practising on the spot to attend for him, and which would be done without any additional expense to the suitor.

The enactment, however, restrains only "an attorney retained as an advocate *by* such first-mentioned attorney," but does not, and certainly ought not to restrain the *suitor* from giving a retainer to another attorney, when he finds that the attorney he first employed cannot attend. The client is surely not to be deprived of the right to *change* his attorney, which he possesses in all the Superior Courts, in order to compel the employment of a barrister.

We are much mistaken if the surreptitious manner in which the alteration in question has taken place will not be condemned by the Bar generally. We have already observed, that the heads of the law unanimously condemn any alteration in the long-established usage of the Profession which requires that a barrister should be instructed by an attorney and cannot receive a brief from the suitor.

ETIQUETTE OF THE BAR.

ADVOCACY IN THE COUNTY COURTS.

ALTHOUGH all our legal contemporaries consist exclusively, we believe, of members of the Bar, we are pleased to observe no one amongst them has *yet* suggested that the Junior Bar should consider the repeal of the clause in the Act 9 & 10 Vict. c. 95, requiring a barrister in the County Courts to be instructed by an attorney, as an abrogation of the established rule of etiquette which restricts a barrister from acting as an advocate without the intervention of an attorney. The efforts made to obtain the repeal of the clause referred to, are justified by our contemporaries upon the ground that the provision contained in it affected the independence of the Bar, and offensively interfered with what should be left to professional regulation, and it is suggested that the licence now restored to the Bar, to act without the intermediary agency of an at-

torney, should only be exercised for the legitimate object of defeating combinations entered into by a class of practitioners whom it has lately become the fashion to describe as "Attorney-Advocates," instead of *Agents* of Attorneys.

Our contemporary the *Jurist* thus refers to the supposed effect of the provision contained in the County Courts further Extension Act:—

"The business in the County Courts will be henceforth, what it ought to be, quite open. If the attorneys practising in any County Court can satisfy their clients that they do not require counsel, it is quite open to them to do so; and if that is fairly done, the Bar ought not, we think, to enter into an unseemly contest for business by abrogating their general rule of not taking business from the parties. But the suitor will no longer be in the position in which he is now—that if the attorneys practising in any County Court choose to combine, they may say to him 'You shall not have counsel—you may have our services or go without; but we *will* not instruct counsel, and you *cannot*.' This is a state of things, which is said to exist in many districts, and it will be properly destroyed by the intended act. We trust that it will have no further or greater effect, and that the result will be the restoration of that proper and wholesome feeling between the Bar and the attorneys, without which the business of the public cannot be well transacted."

The danger is, that the existence of combination will be assumed without proof. The junior members of the Bar, desirous of practising in the County Courts, are to be constituted exclusive Judges of the occasion when it is proper and expedient to accept business without the intervention of attorneys. Every instance in which a barrister has been overlooked and an attorney preferred may be supposed to afford evidence of combination. It is to be hoped, however, that discreet and moderate counsels will generally prevail, and that an invasion of the province of one branch of the Profession by the other will meet with universal discouragement.

NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

MUNICIPAL CORPORATIONS' ACT AMENDMENT.

15 VICT. c. 9.

Reciting 5 & 6 W. 4, c. 76; 3 & 4 Vict. c. 108.

Proprietors of newspapers not to be deemed contractors by reason of advertisements; s. 1.

Suits commenced for certain penalties

under recited acts may be stayed on payment of costs out of pocket; s. 2.

Suits, &c., renewed or continued, may be discontinued on payment of costs out of pocket; s. 3.

Court may make order for discontinuing suit, without payment of costs; s. 4.

Judgments not to be affected; s. 5.

Proprietors of newspapers not disqualified from election to municipal offices by reason of advertisements, &c.; s. 6.

The following are the sections of the Act:—

An Act further to explain and amend the Acts for the Regulation of Municipal Corporations in England and Wales and in Ireland.

[20th April, 1852.]

Whereas by an Act passed in the Session of Parliament holden in the 3 & 6 Wm. 4, c. 76, intituled "An Act to provide for the Regulation of Municipal Corporations in England and Wales," it is (among other things) enacted, that no person shall be qualified to be elected or to be a councillor or an alderman of any borough during such time as he shall have, directly or indirectly, by himself or his partner, any share or interest in any contract or employment with, by, or on behalf of the council of such borough: And whereas by another Act passed in the Session of Parliament holden in the 3 & 4 Vict. c. 108, intituled "An Act for the Regulation of Municipal Corporations in Ireland," it is (among other things) enacted, that no person shall be qualified to be elected or to be a councillor, or an alderman, or a municipal commissioner of any borough, during such time as he shall have, directly or indirectly, by himself or his partner, any share or interest in any contract or employment with, by, or on behalf of any such council, commissioners, or charitable trustees of such borough: And whereas doubts have arisen whether the said enactments may not be deemed to extend to the persons hereinafter mentioned, and it is expedient that such doubts should be removed: Be it therefore enacted,

1. That from and after the passing of this Act no person shall be deemed to have had or to have an interest in a contract or employment with, by, or on behalf of such council, commissioners, or trustees, by reason only of his having had or having a share or interest in any newspaper in which any advertisement relating to the affairs of any such borough, council, commissioners, or trustees may have been or may hereafter be inserted.

2. That immediately from and after the passing of this Act it shall be lawful for any person or persons against whom any original writ, suit, action, bill, plaint, or information shall have been sued out, commenced, or prosecuted on or before the day of the passing of this Act, for the recovery of any pecuniary penalty or penalties incurred under the said enactments, (by reason only of any extension of the words

"contract" or "employment," therein contained, to the case of any such insertion of advertisements in any newspaper as aforesaid,) to apply to the Court in which such original writ, suit, action, bill, plaint, or information shall have been sued out, commenced, or prosecuted, or to any Judge of one of the Superior Courts at Westminster or Dublin, as the case may be, for an order that such writ, suit, action, bill, plaint, or information, shall be discontinued, upon payment of the costs thereof out of pocket incurred to the time of such application being made, such costs to be taxed according to the practice of such Court; and every such Court or Judge is hereby authorised and required, upon such application, and proof that sufficient notice has been given to the plaintiff or plaintiffs, or to his or their attorney, of the application, to make such order as aforesaid, and upon the making of such order, and payment or tender of such costs as aforesaid, such writ, suit, action, bill, plaint, or information shall be forthwith discontinued.

3. Provided always, That in all cases in which any such writ, suit, action, bill, plaint, or information sued out or commenced on or before the 5th day of February, 1852, shall have been renewed or continued before the passing of this Act, or upon which any declaration shall have been filed or delivered, or other proceedings had, after the said 5th day of February, and before the passing of this Act, it shall be lawful for such Court or Judge, upon such application and proof as aforesaid, to make such order as aforesaid for discontinuing the same, upon payment of the costs out of pocket of all proceedings had on or before the said 5th day of February, to be taxed as aforesaid, and such costs out of pocket (if any) of any proceedings had after the said 5th day of February, as the Court or Judge making such order shall think fit to direct, and upon making such order, and upon payment or tender of such costs, such writ, suit, action, bill, plaint, or information shall be forthwith discontinued.

4. Provided also, That in all cases in which any such writ, suit, action, bill, plaint, or information shall have been sued out or commenced at any time subsequent to the said 5th day of February, it shall be competent for such Court or Judge as aforesaid to make such order as aforesaid for discontinuing the same, without payment of any costs; and upon making such order such writ, suit, action, bill, plaint, or information shall be forthwith discontinued.

5. That nothing herein contained shall extend to any action, bill, plaint, or information, or any legal proceeding of any kind whatsoever, in which any judgment shall have passed on or before the day of the passing of this Act, but such proceedings may be thereupon had and taken, and any such judgment may be dealt with in all respects, as if this Act had not passed.

6. That from and after the passing of this Act no municipal commissioner, councillor, alderman, or mayor, in any municipal corporation, within the provisions of either of the said

Acts, shall be deemed to have been or to be disqualified to be elected or to be such municipal commissioner, councillor, alderman, or mayor, by reason only of his having had or having any share or interest in any newspaper in which any such advertisement as aforesaid may have been or may be inserted, but all elections of municipal commissioners, councillors, aldermen, or mayors, as aforesaid shall be deemed and taken to have been and to be valid (unless in cases where judgment may have been obtained before the passing of this Act) notwithstanding any such share or interest as aforesaid.

REGISTRATION OF BIRTHS, DEATHS, AND MARRIAGES.

15 VICT. C. 25.

An Act to Amend an Act for Registering Births, Deaths, and Marriages in England.
[17th June, 1852.]

Whereas by an Act passed in the 6 & 7 Wm. 4, c. 86, intituled "An Act for registering Births, Deaths, and Marriages in England," his Majesty was empowered to provide a proper office in London or Westminster, to be called "the General Register Office," for keeping a register of all births, deaths, and marriages, of his Majesty's subjects in England: And whereas under the authority of the said Act, an office called "the General Register Office," was provided in Somerset Place, Strand; and it has become necessary for the public service that such office should be removed from Somerset Place, and that another office should be provided in lieu thereof; but doubts have arisen whether such office ought not by the said recited Act be provided in the City of London or in the City or Liberty of Westminster, and not elsewhere; to remove which doubts, may it therefore please your Majesty that it may be enacted; and be it enacted, That it shall be lawful for her Majesty, her heirs or successors, from time to time, to provide a proper office, to be called "The General Register Office," in such place or places as may appear to the Commissioners of her Majesty's Treasury for the time being to be fit and convenient for the purpose, anything in the said recited Act or in any other Act of Parliament, or otherwise, to the contrary notwithstanding.

NOTICES OF NEW BOOKS.

The Acts for promoting the Public Health, 1845 to 1851, to which is added, the Practice of the General and Local Boards of Health, with copious Notes and Tables. By CUTHBERT W. JOHNSON, Esq., Barrister-at-Law, Chairman of the Croydon Board of Health. London: Charles Knight. 1852. Pp. 328.

THIS is a useful work, as well for the

Profession as the public, and especially for all persons engaged officially in the affairs of parishes and local boards.

It has been supposed that when the Act is applied to a district, that district becomes completely under the direction of the General Board of Health at Whitehall. This is not so. Mr. Johnson observes that—

"It will be found in practice that the Act must be applied for under section 8, in a petition signed by at least one-tenth of the inhabitants. On this petition being received by the General Board an inspector is appointed, and if after a careful survey and publicly hearing evidence his report is favourable, an Order in Council, or a Provisional Order, is issued, under which (provided the Provisional Order is confirmed by Parliament) authority is given, under section 12 of this Act, for the ratepayers to elect a local Board of Health from amongst themselves.

"Now, when the Local Board is thus formed, to that board almost all power and authority are committed. Its members may see fit to carry out vigorously and conscientiously the public objects of this Act; they may raise by rates, or by mortgage of those rates, sufficient money to satisfy the sanitary demands of the electors, or they may be a timid or too parsimonious board; they may meet, debate, but do nothing that involves an outlay of any money on permanent improvements. In such a case there is no remedy but for the ratepayers to elect more useful members of their board. A well-advised body of electors will indeed be very careful in the selection of their board. They should, if they can do so, secure a majority composed of the *independent* and most sensible of their neighbours—gentlemen not dependant in any way upon their neighbours for their income, and therefore not likely to be deterred from the execution of their duty by any fears of losing customers or the hope of the favours of any section of the ratepayers. It is desirable that there should be tradesmen on the board, but it is equally so that they should not be all merchants, nor even the majority, especially if the board has much to accomplish.

"The Local Board then being formed (and one-third of it must be re-elected annually) is free, and unshackled by the General Board in all its resolutions as regards new works.

"All the specific powers thereafter possible to be exercised over the Local Boards by the General Board are as follows:—By section 37, they may approve or disapprove of the removal of the local surveyor; section 40, of the appointment or removal of the officer of health; by section 41, they describe the scale upon which any local map for sewerage purposes is made. A ratepayer may appeal to the General Board against the decisions of the Local Board—section 64, as to noxious and offensive trades. As to new streets, section 72; and against private improvement expenses, section 120. The General Board may also regulate

contracts as to public pleasure grounds, section 74, or supplies of water, section 75, and burial grounds, section 82."

Mr. Johnson first describes the origin of the Public Health Act, and discusses the question whether it is desirable that the Act should be applied to a particular district. After quoting the preamble of the Act and the Interpretation Clause, he proceeds to state the constitution of the General Board of Health and the petition of inhabitants for the application of the Act to a district. Next he treats of the selection and election of local boards, meetings of local boards, and the appointment of officers. The following subjects are noticed in detail :—

1. Maps, plans, surveys, &c.
2. Sewers, drains, privies, &c.
3. Refuse matters, such as dust, ashes, &c.
4. Offensive ditches, drains, &c.
5. Unwholesome houses.
6. Slaughter Houses, &c.
7. Offensive trades.
8. Common lodging houses.
9. Management of streets, &c.
10. Places of public recreation.
11. Public supply of water.
12. Burial grounds.

The purchase of lands and contracts of local boards are next treated of; also the rates of local boards; the bye-laws and the duties of a local board as surveyors of highways; and appeals from a local board.

The Act merely aims at ensuring a full, uniform, and efficient system of sanitary improvement by a *local* board, and not to establish a system of centralization.

PRIVILEGED COMMUNICATIONS.

ATTORNEY AND CLIENT.

THE professional confidence which a client reposes in his attorney or solicitor is held to be inviolable, and the communications between them are not to be disclosed at any period, even after the termination of the proceeding or after the relation of attorney and client has ceased. The privilege is given for the benefit of the client, not of the attorney.¹

In a recent case before Vice-Chancellor Sir George Turner, the reasons of the rule which protects from disclosure communications made in professional confidence were

held to apply in cases of conflict between the client, or those claiming under him, and third persons; but that the privilege does not belong to executors as against the next of kin. In that case a bill had been filed by the next of kin of a deceased party against his executors, who were his residuary devisees and legatees,—alleging that the gift of the property was made to them upon a secret trust for the foundation of a school. The solicitor of the testator, who was also, after the death of the testator, the solicitor of the executors, was examined as a witness for the plaintiff. On a motion by the defendants to suppress the depositions of the solicitor on the ground of professional confidence, it was held that the communications between the testator and the solicitor might be read; but that the communications between the executors and the solicitor, after the death of the testator, were privileged; and it was held that a privilege given for the protection of the client cannot have the effect of excluding evidence of a trust which he had intended to create, and thus defeat a claim by the parties who accepted the trust, to hold the trust property beneficially.

In the same case it was also decided that communications between solicitor and client, through the medium of an agent, are protected equally with communications had directly with the principal; but it is probable that the existence of an illegal purpose would prevent any privilege from attaching to the communications between solicitor and client. The judgment of the Vice-Chancellor was as follows :—

"The question is, whether the statements thus made by this witness, or any of them, ought to be received in evidence against these defendants. This question must be separately considered with reference to the communications which were had in the lifetime of the testator, and those which were had after his decease; but I do not think, that, with reference to the communications which were had in the testator's lifetime, any distinction can properly be made between the communications which were had with the testator and those which were had with the defendant, William Jackson; for I think that the defendant, William Jackson, in the communications then had with him, must be considered to have acted as the agent of the testator, and as the channel of communication between him and the witness; and I think that the protection which the law throws round communications of this nature, extends to them when had through the medium of an agent, as far as it would extend to them if had with the principal.

"As to the communications which were had in the lifetime of the testator, I am of opinion that

¹ Lord Saye and Sele's case, 10 Mod. 40; *Wilson v. Rastall*, 4 T. R. 759; *Rex v. Withers*, 2 Camp. 578; *Cholmondeley v. Clinton*, 19 Ves. 261.

the evidence ought to be admitted. It is evident that the rule which protects from disclosure confidential communications between solicitor and client, does not rest simply upon the confidence reposed by the client in the solicitor; for there is no such rule in other cases, in which at least equal confidence is reposed; in the cases, for instance, of the medical adviser and the patient, and of the clergyman and the prisoner. It seems to rest, not upon the confidence itself, but upon the necessity of carrying it out. Lord Brougham, in *Greenough v. Gaskell*, 1 My. & K. 98, gives, I think, the true foundation of it. He says:—"It is founded on a regard to the interests of justice, which cannot be upholden, and to the administration of justice, which cannot go on without the aid of men skilled in jurisprudence, in the practice of the Courts, and in those matters affecting rights and obligations which form the subject of all judicial proceedings. If the privilege did not exist at all, every one would be thrown upon his own legal resources; deprived of all professional assistance, a man would not venture to consult any skilful person, or would only dare to tell his counsellor half his case." (1b. 103.) This then being the foundation of the rule, the Courts, when called upon to apply it, must of course have regard to the foundation on which it rests, and not extend it to cases which do not fall within the mischief it was designed to prevent. It cases were the rights and interests of the client or of those claiming under him come in conflict with the rights and interests of third persons, there can be no difficulty in applying the rule. If it was not applied in such cases, the client could never with safety state to his solicitor the true position of his case. He would be driven to speculate as to what it would be for his interest to divulge. The prosecution or defence of his rights could not be adapted to the circumstances as they really existed, and the Courts of Justice would be embarrassed with imperfect information arising from imperfect communication; but when we pass from the case of conflict between the rights and interests of the client and parties claiming under him, and those of third persons, to the case of testamentary disposition by the client, do the same reasons apply? The disclosure in such cases can affect no right or interest of the client. The apprehension of it can present no impediment to the full statement of his case to his solicitor, unless indeed he is contemplating an illegal disposition, a case to which I shall presently refer; and the disclosure when made can expose the Court to no greater difficulty than presents itself in all cases where the Courts have to ascertain the views and intentions of parties, or the objects and purposes for which dispositions have been made. In the cases of testamentary dispositions, the very foundation on which the rule proceeds, seems to be wanting; and in the absence, therefore, of any illegal purpose entertained by the testator, there does not appear to be any ground for applying it.

"Can it then be said that the communication should be protected, because it may lead to the disclosure of an illegal purpose. I think that it cannot; and that evidence which would otherwise be admissible, cannot be rejected upon such a ground. On the contrary, I am very much disposed to think that the existence of the illegal purpose would prevent any privilege attaching to the communication. Where a solicitor is party to a fraud, no privilege attaches to the communications with him upon the subject, because the contriving of a fraud is no part of his duty as solicitor; and I think it can as little be said that it is part of the duty of a solicitor to advise his client as to the means of evading the law. Another view of the case is, that the protection which the rule gives is the protection of the client; and it cannot, I think, be said to be for the protection of the client that evidence should be rejected, the effect of which would be to prove a trust created by him, and to destroy a claim to take beneficially by parties who have accepted that trust.

"The argument on the part of the defendants was, that the privilege did not terminate with the death of the client; that it belongs to a purchaser from the client, and must equally belong to a volunteer under him; that it follows the legal interest, and must rest in the executor claiming under the will, and not in the next of kin claiming adversely to it. That the privilege does not in all cases terminate with the death of the party, I entertain no doubt. That it belongs equally to parties claiming under the client, as against parties claiming adversely to him, I entertain as little doubt; but it does not, I think, therefore, follow that it belongs to the executor as against the next of kin in such a case as the present. In the one case the question is, whether the property belongs to the client or his estate, and the rule may well apply for the protection of the client's interest. In the other case the question is, to which of two parties claiming under the client the property in equity belongs; and it would seem to be a mere arbitrary rule to hold that it belongs to one of them rather than to the other. Besides, if the privilege be one which follows the legal interest, it must, I think, be subject to circumstances to which the legal interest is subject; and if the legal interest be subject to a trust, the privilege must be subject to it also. And in this view of the case, to permit the defendants to avail themselves of the privilege, would be to permit them by the use of the privilege to exclude the question, whether they were trustees of it or not. These are the views which I entertain upon this question, without reference to the authorities. Those which were cited on the part of the defendants, do not appear to me to affect the question. The general remarks which are to be found in the books must, of course, be understood with reference to the case in which they are found, and none of those cases at all approach to the present. They were all cases arising between the clients

or parties claiming under them and adverse claimants.

"There are cases, however, which, I think, approach more nearly to the present, and support the opinion I have formed. Cases in which the Court has received and acted upon such evidence without objection. In *The Duke of Bedford v. The Marquis of Abercorn*, 1 My. & Cr. 312, the Court received and acted on the evidence of a solicitor, as to the intention of parties to marriage articles, and directed a settlement differing from the articles mainly upon the truth of such evidence; and in *Nurse v. Finch*, 1 Ves. jun., 344, 359, where the question was, whether executors were trustees for the next of kin of an undischarged residue, the evidence of the solicitor who had prepared the will, as to what had passed between him and the testator, was received and minutely commented upon in the judgment. These cases, and particularly the latter, have, I think, a strong bearing upon the present; and upon the authority of them, as well as upon principle, my opinion upon the whole is, that the evidence as to the communications which took place in the testator's lifetime must be received.

"With respect to the evidence as to what passed with the defendant, William Jackson, upon the occasion of the instructions for the will being delivered to him after the death of the testator, I think the case stands upon a different footing. This was clearly a communication between solicitor and client in the course of professional business, and all principle and all authority are against its admission. The depositions, therefore, to this extent ought to be suppressed." *Russell v. Jackson* 9 Hare, 387.

UNITED LAW CLERKS' SOCIETY.

THE TWENTIETH ANNUAL REPORT OF THE COMMITTEE OF MANAGEMENT.

WE have much gratification in calling the attention of our readers to the following Report of this valuable and well-managed Society. The most encouraging and laudable feature in this Annual Summary of its progress is, that not less a sum than 1,200*l.* has been subscribed by the members themselves in the course of one year. And whilst the Society has discharged its primary duty in taking care of its own members, it has generously assisted many of the distressed who do not belong to it.

The Committee in presenting their Twentieth Annual Report, have much pleasure in announcing the continued progress of the Society. Although they have received during the past year an increased number of claims, they have satisfied them all; and through the kind continuance of that support which the Society has received from the Profession, the

necessary addition to the Society's General Fund has been accomplished without difficulty.

During the past year, twenty-one members whom severe illness entirely prevented from following their employment, applied to the Society for the assistance it affords its members when thus afflicted, and each received a sum of one guinea per week so long as his illness continued. This relief has required an expenditure of 270*l.*, making, with the payments in previous years, a sum of 2,71*l.*, paid to members on this account. Except in extreme cases, this assistance is seldom sought. Of the twenty-one cases just mentioned, three, or one in every seven, terminated fatally.

At the commencement of the year, there were six members in receipt of the superannuation allowance which is granted for life (without the risk of an election as in other societies) to every member who may be permanently disabled by old age, blindness, or other infirmity from following his employment. This allowance, payable weekly, varies according to length of membership from 2*l.* to 3*l.* 8*s.* per year. The claims of two of these members have ceased by death. One received yearly 3*l.* 4*s.*, and the other 3*l.* 8*s.*, and on their decease the family of each received a sum of 50*l.* Of the four surviving members, three received yearly 3*l.* 4*s.* each, and the other 3*l.* 8*s.* The expenditure under this head has during the year amounted to 176*l.* 16*s.*

In addition to all benefits which a member may have received during his life his family is entitled on his decease to a sum of 50*l.* During the year, the number of deaths amongst the members has been seven, and to their widows and families 350*l.* has been paid. Three members, whose wives died during the same period, have each received a sum of 25*l.*, making the total payments on account of death 4,067*l.* 10*s.*

The claims in sickness, in permanent affliction, and on death, are all paid out of the principal fund called "The General Benefit Fund." The certainty that they must considerably increase in a few years has led the Committee for some time past to direct their attention, after satisfying all present demands, to make every possible addition to the Society's capital; that due provision may be made for that period when, from age and other infirmities, many of those now contributing to the funds of the Society may be expected to stand in need of its benefits. At the audit in April, 1851, the General Fund amounted to 13,211*l.* 10*s.* 2*d.*; the receipts of the year (including a small legacy) amounted to 2,309*l.* 6*s.* 8*d.*; and the expenditure to 1,007*l.* 14*s.* 10*d.* The difference has been added to the Society's investments which are all made in the names of its trustees with the Commissioners for the Reduction of the National Debt, and which have thus been increased from 13,458*l.* 18*s.* 1*d.* on the 20th May, 1851, to 14,640*l.* 19*s.* 10*d.* on the 20th May, 1852. As each superannuated member requires the interest of 1,000*l.* to

satisfy his yearly claim, the importance of augmenting the capital becomes apparent.

The Committee have much pleasure in reporting that since the last Annual Festival, which, through the great kindness of the Lord Justice Knight Bruce, who presided, and the Benchers of the Honourable Society of Lincoln's Inn, took place in their Great Hall, the Society has received a considerable accession to the number of its annual subscribers, and that the members themselves have during the year contributed to the funds upwards of £1,200*l*.

The Casual Fund is a distinct fund kept entirely separate from the General Fund, and created by the donations of the Profession and the subscriptions of the members. It is employed in assisting with small gifts of money distressed Law Clerks (not members and their widows) who may be suffering from distress not attributable to their own misconduct: members and their families are also entitled to similar relief, but these gifts are rarely made to them. Every application from a non-member or his widow must be recommended by a donor or free member, and it is then carefully investigated by an officer of the Society before it can be entertained; every precaution being taken to prevent undeserving persons receiving any benefit from this fund. During the year, 49 applications for relief have been received, and 31 being found deserving, the applicants were assisted as far as the funds and rules permitted; the rest being ineligible could not be entertained. In addition to the relief thus afforded, several small loans have been granted to members requiring temporary assistance. These loans are made free from all charge, and repayable by instalments suitable to the circumstances of the borrower. The relief thus afforded, including the loans just mentioned, has amounted to 324*l*. 10*s*., which, added to the disbursements of former years, makes the total expenditure out of this fund 4,110*l*. 6*s*.

The Casual Fund has never attained any considerable amount. The balance in hand on the 7th April, 1851, amounted to 92*l*. 13*s*. 3*d*. The receipts of the year have been 369*l*. 12*s*. 6*d*., and the disbursements 352*l*. 17*s*., leaving in hand on the 7th April last 108*l*. 8*s*. 9*d*.

A noble and distinguished Judge who once presided over one of these Anniversary Meetings, in speaking of this and similar institutions, stated "that societies in which those who are in vigorous health provide for the day of sickness, and those who are in the sunshine of prosperity provide against the probability of a cloudy day, and those who are in such vigour of life that death may appear but a dream at a distance, yet provide against that certain though possibly distant event, present an object of moral beauty in which this country may challenge comparison with all the world, for in such institutions we are without rivals." This Society not only makes provision for all these events, but its members have also added a Casual or Benevolent Fund to assist those

less fortunate than themselves. The Committee are not forgetful how much of the Society's prosperity is attributable to the liberal support it has received from the Profession,—they are deeply grateful for it, and feel assured that without it, its present satisfactory condition could never have been obtained.

HARRY G. ROGERS, *Secretary*.
Freemasons' Tavern, London, June 16th, 1852.

PROROGATION AND DISSOLUTION OF PARLIAMENT.

On Thursday, the 1st instant, her Majesty prorogued the Parliament, in person. The Royal Speech from the Throne contained the following passages relating to the several measures of Law Reform which have been under the consideration of the Houses of Parliament during the Session:—

"I have gladly assented to the important Bills which you have passed for effecting reforms, long and anxiously desired, in the practice and proceedings of the Superior Courts of Law and Equity, and generally for improving the administration of Justice. Every measure which simplifies the forms and diminishes the delay and expense of legal proceedings, without introducing *uncertainty of decision, impairing the authority of the Courts, or lowering the high standard of the Judicial Bench*, is a valuable boon conferred upon the community at large."

Parliament was dissolved on the same day.

ADVICE TO STUDENTS.

"LET it never be forgotten by you, that upon the manner in which you employ your hours whilst in London will depend the manner in which your years are passed when your studies are completed. All that seems laborious, or even irksome here, is but a preparation for the success to which you all look forward, and the reputation which you all hope to acquire. The child painfully learns to put letters into syllables, and syllables into words, and words into sense;—the youth is perplexed with the mysteries of grammar; yet these are the preparations for every intellectual accomplishment; for reading, for composition, for poetry, for eloquence, for immortal fame. * * * * * Some of you, too, there must be, whose anxious friends have to make no small sacrifices to enable you to complete your studies in this school. Do not forget those sacrifices. Do not forget those anxious hopes, or the confidence which they repose in you, or the pride and affection with which they regard you. Before *your* success can be secured in your profession, *they* will, in all probability, be

removed from this anxious world. Their disinterested aid seeks for no other return than your industry, and no other recompense of them is ever likely to be in your power but that of passing your time as they, in your absence from them, fondly hope that it is passed.”
—From *Dr. John Conolly's Lectures*.

ROYAL ASSENTS TO BILLS RELATING TO THE LAW.

15 VICT. 1852.

April 20.

Inclosure of Lands, c. 2.
Intestates' Personal Estates, c. 3.
Annual Indemnity, c. 4.
Municipal Corporations' Act Amendment, c. 5. See p. 172, *ante*.
Provisional Registration of Inventions, c. 6.

May 3.

Disfranchisement of St. Albans, c. 9.

May 28.

Copyright, c. 12. See p. 111, *ante*.
Poor Relief Act Continuance, c. 14. See p. 131, *ante*.
Loan Societies, c. 15.
Ecclesiastical Jurisdiction, c. 17. See p. 131, *ante*.
Stock in Trade exemption from Poor-Rate, c. 18.
Highway Rates, c. 19.
Property and Income Tax, c. 20.

June 17.

Stamp Duties' Continuance, c. 21.
Shortening Time for Assembling Parliament, c. 23. See p. 151, *ante*.
Law of Wills Amendment, c. 24. See p. 150, *ante*.
Registration of Births, c. 25. See p. 174, *ante*.
Law of Evidence (Scotland), c. 27.

June 30.

Turnpike Trusts Arrangements.
General Board of Health.
Disabilities Repeal.
Passengers' Act Amendment.
Militia.
Trustees' Act Extension.
Enfranchisement of Copyholds.
Property of Lunatics.
County Courts.
Appointment of Overseers.
Corrupt Practices at Elections.
Protestant Dissenters.
Metropolitan Sewers.
Friendly Societies.
Incumbered Estates (Ireland).
Common Law Procedure.
Secretary of Bankrupts.
Nisi Prius Officers.
County Rates.

Commons Inclosure Acts Extension.
Masters in Chancery Abolition.

July 1.

Improvement of the Jurisdiction of Equity.
Patent Law Amendment, No. 2.
Suits in Chancery Relief, No. 2.

LAW BILLS POSTPONED OR NEGATIVED.

House of Lords.

District Courts of Bankruptcy Abolition.—Lord Brougham.
Common Law Fees' Regulation.
Lunacy Proceedings' Expenses (No. 2).—Lord Lyndhurst.
Ecclesiastical Courts (Criminal Jurisdiction).—Lord Wodehouse.
Court of Chancery (Ireland).
Drainage and Embankment of Lands.—Earl of Carlisle.
Parliamentary Proceedings Facilitation.—Lord Lyndhurst.
Churchwardens' Elections. Bishop of Salisbury.

House of Commons.

Charitable Trusts.—The Attorney-General.
Attorneys' Certificate Duty Repeal.—Lord Robert Grosvenor.
Law of Mortmain.—Mr. Headlam.
Grand Juries (Metropolitan District).—The Attorney-General.
Vestries' Regulation.—Sir De Lacy Evans.
Friendly Societies.—Mr. Sotherton.
County Rates and Expenditure.—Mr. Milner Gibson.
County Election Polls.—Lord Robert Grosvenor.
Extension of the Right of Voting.—Lord John Russell.
Extension of Suffrage.—Mr. Locke King.
Qualification of Members of Parliament.
Parliamentary Representation.
Corrupt Practices at Elections (No. 2).
Militia Laws.—Lord John Russell.
Messenger to the Great Seal.

At the time we go to press, the fate of a few more Bills is not known; but we believe all that are of importance have been noticed. Any others that may be worthy of attention shall be adverted to in our next Number.

Every Act material to be considered by the practitioner shall be given *in extenso* as early as possible, with explanatory Notes.

NOTES OF THE WEEK.

TESTIMONIAL TO MR. JUSTICE PATTESON.

A LARGE number of the principal law clerks who have been accustomed to attend Mr. Justice Patteson at Chambers, have presented the learned and excellent Judge with a very handsome silver Inkstand and an Address, recording their respect for his judicial character and their grateful sense of his invariable patience and urbanity. We shall be glad to find space in our next Number for the Address and the Answer.

THE CHANCERY JUDGES' CHIEF CLERKS.

Many of our readers are aware that the Equity Judges, in order to appoint the most

competent persons to fill the Office of Judges' Chief Clerks, under the Masters in Chancery Abolition Act, have requested the Council of the Incorporated Law Society to name a certain number of fit persons, from which the Judges will make their selection. The delegation of this duty to the Council of the Incorporated Law Society, is highly honourable to that body, and we doubt not they will conscientiously discharge it.

LAW PROMOTION.

Edward Smirke, Esq., Barrister-at-Law, has been appointed Attorney-General of his Royal Highness the Prince of Wales, in the room of the Hon. John Chetwynd Talbot, deceased.—From the *London Gazette* of 29th June.

RECENT DECISIONS IN THE SUPERIOR COURTS

AND SHORT NOTES OF CASES.

Lord Chancellor.

In re Walker's Trust. May 4, 5, 1852.

WILL.—CONSTRUCTION.—ABSOLUTE GIFT.—LIFE INTEREST WITH BENEFIT OF SURVIVORSHIP.

A testator, after giving a life interest to his wife, directed all his property to be equally divided between his children, and his executors and trustees were directed upon such division to lay out the whole of the moneys that would belong to his three daughters as their shares in the 3 per cent. consols, and that neither of them should have the power of receiving more than the dividends due on their respective shares; but, in case of the marriage of all or either of his daughters, the child or children of either of them that should outlive their mother should have their mother's share at their own disposal, both principal and interest; and he also directed that in case of the death of one or more of his said children that might die unmarried, his, her, or their share and shares should be equally divided among the survivors of his said children or their children: Held, dismissing, without costs, an appeal from Vice-Chancellor Knight Bruce, that upon the death of a daughter unmarried, although after the decease of the tenant for life her share survived to her brothers and sisters living at her death.

THE testator, William Walker, by his will, dated in November, 1799, gave his wife a life interest in all his property, and directed that at her death all his aforesaid property of every description should be sold and equally divided between his children (naming them), and then directed that the trustees should, upon dividing

the whole of his said property equally as above directed, immediately lay out the whole of the moneys that would belong to his three daughters as their shares of the said property in the 3 per cent. consols, and that neither of them, his above-mentioned daughters, should have the power of receiving more than the dividends due on their respective shares; and he further directed that in case of the marriage of all or either of his daughters, the child or children of them, his said daughters, that should outlive his, her, or their mother or mothers should have his, her, or their mother's shares at their own disposal, both principal and interest; and in case of the death of one or more of his aforesaid children that might die unmarried, his, her, or their share or shares should be equally divided among the survivors of his aforesaid children or their children. The tenant for life died in 1838, and upon the death of one of the daughters in 1849, unmarried, her executor presented this petition for payment of her share out of Court. The Vice-Chancellor Knight Bruce, having held that her share went over to the surviving brothers and sisters, dismissed the petition, whereupon this appeal was presented.

Skebbeare and Roxburgh, in support of the appeal, referred to *Ring v. Hardwick*, 2 Beav. 352; *Mayer v. Townsend*, 3 Beav. 443; *Brown v. Temperley*, 3 Russ. 268; *Da Costa v. Keir*, ib. 360.

Follett and Steers, contra.

The Lord Chancellor said, that the rule of law was well established, that if there was a gift with certain modifications which did not absorb the whole gift, on the failure of such modifications the gift became absolute. But in this case it appeared that the testator had intended to restrict his daughters' interest to their lives and to give the principal at her death to her children, and it was clear the survivorship referred, not

only to such as should die unmarried, &c., in the lifetime of the tenant for life, but was also a restriction taking effect at the death of the daughter or daughters themselves. The share of the petitioner's testatrix, therefore, survived to her brothers and sisters, and the appeal must be dismissed, but under the circumstances, without costs.

Lords Justices.

In re Hart. June 4, 1852.

LUNACY.—COSTS OF SOLICITORS TO COMMITTEES.—TAXATION.—PAYMENT NOTWITHSTANDING STATUTE OF LIMITATIONS.

An order had been obtained by solicitors in 1842, to tax their bill of costs for business incurred in taking out and prosecuting a commission in lunacy, but no taxation had taken place up to the lunatic's death in 1847, and they had since failed in an action against the committees, on the plea of the Statute of Limitations. An order was made on the petition for the taxation of their costs, but without prejudice to any question whether they had any claim on the assets of the lunatic.

There was a petition for an order for the taxation of the bill of costs of the petitioners, who had been employed by the committees to take out and prosecute the commission in this lunacy. It appeared that an order to tax had been obtained in 1842, but no taxation had been had before the death of the lunatic, which took place in 1847. An action had been brought upon the committees refusing to pay the amount, but the verdict passed for the defendants, on the plea of the Statute of Limitations.

Fendergust in support, on the ground the costs ought to be paid out of the estate, and that as there was no personality, they ought to be a charge on the realty, and citing *Williams v. Westworth*, 5 Bear. 325: *Taylor v. Taylor*, 3 M'N. & G. 426.

Greenside, for the committees, contra.

The Lords Justices said, that the Court had no jurisdiction to make any declaration of charge, but an order was made for the taxation of the costs, without prejudice to any question whether the petitioners had any claim on the assets of the lunatic.

June 25.—*Hyde v. Corporation of Manchester*—Bill dismissed, with costs, without prejudice to action at law.

—25.—*Riddle v. Shrewsbury Railway Company*—Stand over.

—25.—*Bathoven v. Cobb*—Appeal from Vice-Chancellor Parker dismissed, with costs.

—26.—*Walker v. Tipping*—Arrangement come to.

—26.—*Bell v. Burehard*—Stand over.

—26.—*Nickson v. Lloyd*—Part heard.

—29.—*Glass v. Richardson*—Part heard.

Master of the Rolls.

Craig v. Lawley. June 26, 1852.

CLAIM.—INVESTMENT OF LEGACY GIVEN TO INFANT.—COSTS.

A testator gave a legacy to an infant, and empowered his trustees and executors to invest the same in the public funds or real securities, the income to be paid to the infant when he attained 21, until payment of the fund when he was 24. The testator died on August 26, 1850, and a claim was filed by the infant's next of kin for the investment of the legacy on May 8, 1852, and it was invested on May 15: Held, that costs were only payable up to May 15, out of the estate.

Bird appeared in support of this claim, which was filed by the next friend of an infant, to whom the testator, William Lawley, had bequeathed a legacy of 700*l.*, to be payable when he attained the age of 24. The trustees and executors were empowered to invest either in the public funds or on real securities, and they were to pay the interest thereon upon the infant's attaining 21, until the fund became payable. It appeared the testator died on August 26, 1850, and that upon the defendants not having invested the amount of the legacy, this claim was filed on May 8, 1852. The money was invested on the 15th May.

R. Palmer for the defendants.

The Master of the Rolls said, that the costs up to the 15th May were only to be paid out of the estate.

Ankrett v. Barnett. June 26, 1852.

SPECIAL CLAIM.—LEAVE TO FILE.—SIGNATURE OF REGISTRAR.

The signature of the registrar to a special claim should be obtained at the time leave is obtained to file the same.

LEAVE had been obtained at the last seal to file this claim, but it had been omitted to obtain at the same time the registrar's signature to the parchment, and he now refused to sign.

C. Hall now applied in reference thereto, there being a difference in practice amongst the registrars.

The Master of the Rolls said, the general practice was for counsel to produce the parchment to the registrar for signature when the application was made for leave to file the claim.

June 25.—*Lewis v. Loftus*—Judgment as to construction of codicil.—costs out of estate.

—26.—*Eden v. Sharp*—Reference to the Master to settle lease, on claim for specific performance of contract to grant same.

—26.—*In re Myddleton's Charity*—Order by consent as to distribution of fund.

—25, 26.—*Gray v. Haig; Haig v. Gray*—Decree for account.

—24, 29.—*Lord Ward v. Oxford, Worcester, and Wolverhampton Railway Company*—Stand over, with leave to bring action at law.

June 29.—*Bridge v. Bridge*—Cur. ad. ult.
— 29.—*Reynolds v. Cortright*—Demurrer to bill overruled.

Vice-Chancellor Turner.

Johnstone v. Shaw and another. June 5, 1852.
APPOINTMENT OF NEW TRUSTEES.—POWER UNDER WILL WHERE SUIT INSTITUTED.

Held, that parties having a power of appointment under a will, must, where a bill is filed, appoint, subject thereto, and that, on a reference to approve of trustees, the Master is not absolutely bound by such appointment, although it is not to be altogether disregarded.

A trustee was disapproved of, where there was reason to fear he would not act in harmony with the other trustees who had been approved.

Four trustees were appointed by the will of a testator, which contained a power for the executors of the last surviving trustee to appoint new trustees. It appeared that three of the trustees renounced, and that the fourth died without having appointed new trustees, leaving the defendants her executors, and upon their not having exercised the power, this suit was instituted, and a reference directed to the Master to approve of trustees, with liberty to the defendants to carry in proposals. The Master had approved of three of the trustees proposed by the defendants under their power, and of a fourth, who was proposed by another defendant interested in the property. Exceptions were now taken to the report, on the ground the Master should have appointed all the parties proposed under the power, and it was also objected that the fourth trustee was an objectionable person.

The Vice-Chancellor said, that the defendants could only appoint *pendente lite*, subject to the bill, and that the Master, although he could not altogether disregard the appointment so made, was not absolutely bound thereby, and the exceptions were accordingly overruled. The appointment, however, of the fourth trustee could not be sanctioned, as there was reason to fear he could not act in harmony with the other trustees.

June 25.—*Allen v. Ashton*—Order as to production of deeds.

— 25.—*In re Powell's Trust*—Order on petition for payment of moneys out of Court under Trustees' Act, without costs.

— 25.—*Tidd v. Lister*—Judgment on petitions herein.

— 25.—*In re Burton's Trust*—Judgment as to construction of will.

— 26.—*Official Manager of Grand Trunk Railway Company v. Bradie*—Bill dismissed with costs, to be paid by the official manager.

— 24, 28.—*Simpson v. Denison*—Injunction granted.

— 29.—*Robinson v. Governors of London Hospital*—Part heard.

Vice-Chancellor Kindersley.

Stansfield v. May. May 26, 1852.

MORTGAGE.—SUIT BY ASSIGNEES OF BANKRUPT MORTGAGOR TO REDEEM AND FOR AN ACCOUNT.—ACTION AT LAW.—DEMURRER.

Upon the bankruptcy of a mortgagor, the mortgagee brought an action at law under the 7 Geo. 2, c. 20, and a reference was made to the Master to compute the sum due for principal and interest. It appeared that the mortgagee, who was a solicitor, had deducted certain legal expenses which were disputed. A demurrer was overruled to a bill by the assignees to redeem and praying an account, and for an injunction to restrain the proceedings at law, and which alleged the mortgagee had claimed more than was due for principal and interest.

This bill was filed on behalf of assignees of Mr. Pritchard, a bankrupt, who had mortgaged certain premises in the year 1849 to the defendant, a solicitor, to secure two sums of 500*l.* upon a legal mortgage and an equitable one by deposit of title-deeds, to redeem and for an account, and for an injunction to restrain the proceedings at law. It appeared that upon the mortgagor becoming a bankrupt the defendant had brought an action at law under the 7 G. 2, c. 20, and that a reference had been made to the Master to compute the sum due for principal and interest and the amount due was fixed at 1,102*l.* It also appeared that considerable deductions had been made from the sum paid to the plaintiff on account of legal expenses and which were disputed.

W. T. S. Daniel and Shapter appeared in support of a demurrer to the bill on the ground that by the 7 Geo. 2, c. 20, the Common Law Court had jurisdiction to decide the questions at issue.

Stuart and Tripp, contra.

The Vice-Chancellor said, that the act only applied where there was a sum of money claimed for principal and interest, and that, as the allegation in the bill must be taken for the purposes of the demurrer to be admitted by the defendant, of his having claimed more than was due for principal and interest, the act did not apply, and the demurrer must be overruled.

June 24.—*Turner v. Evans*—Stand over to Michaelmas Term, with liberty to plaintiff to proceed at law.

— 24.—*Harper v. Trimmer*—Order for appointment of receiver.

— 25.—*Ex parte Roberts, in re Wolverhampton, Chester, and Birkenhead Railway Company*—Appeal dismissed.

— 26.—*Brougham v. Squire*—Bill dismissed.

— 28.—*Clowes v. Waters*—Exceptions allowed to Master's report.

Vice-Chancellor Parker.

In re Liverpool Marine Assurance Company, ex parte Greenshields. June 1, 1852.

WINDING-UP ACT.—BANKRUPT SHAREHOLDER.—LIABILITY AS CONTRIBUTORY.

Held, discharging the Master's order inserting the appellant's name on the list of contributories to a joint-stock company, that upon the bankruptcy of a shareholder his future liability ceased in the partnership.

THIS was an appeal from the decision of the Master inserting the appellant's name on the list of contributories to the above company in respect of 100 shares for any losses sustained on and subsequent to Oct. 30, 1848. It appeared that upon the appellant becoming bankrupt on Oct. 30, 1848, his assignees disclaimed all interest in the shares.

J. V. Prior, in support, cited *Ex parte Kuper's assignees*, 3 De G. & S. 113.

Selwyn, for the official manager, contra, referred to *South Staffordshire Railway Company v. Burnside*, 5 Exch. R. 129.

The Vice-Chancellor said, that the partnership was dissolved by the bankruptcy, and that the appellant then became entitled to have the accounts taken and the accounts wound up, which might result either in a proof against the estate or in the assignees being entitled to receive what might be due, and he could not be liable in respect of any future claim. The appeal was therefore allowed, costs to be paid out of the estate.

In re Levett's Trust. June 26, 1852.

TRUSTEES' RELIEF ACT.—PETITION.—AFFIDAVIT OF TRUSTEES.

Held, that the petition for payment out of Court, under the 10 & 11 Vict. c. 96, to the tenant for life of the income of the fund, should set out the affidavit made by the trustees on paying the fund into Court.

Renshaw appeared in support of this petition, under the 10 & 11 Vict. c. 96, for the payment out of Court to the tenant for life of the income of the fund which had been paid in by the trustees.

Deane for the trustees.

The Vice-Chancellor, upon its appearing that the petition did not set out the affidavit made by the trustees on paying in the fund, said that it was necessary for such affidavit to be set out in terms, as it was the declaration of trust upon which the Court acted.

June 24.—*Ex parte Incumbent, &c., of Brompton*—Master's report confirmed as to objects of charity.

—24.—*Lumley v. Wagner*—Injunction made perpetual on defendants' application, and for payment of costs of suit.

—25.—*Clay v. Rufford*—Cur. ad. vult.

—26, 28, 29.—*In re Bedford Charity*—Order as to charity scheme.

Court at Queen's Bench.

Bastow v. Gant, administrator. May 22, 1852.

FOREIGN ATTACHMENT.—CERTIORARI.—ADMINISTRATOR.—SPECIAL BAIL.

Held, refusing a rule to set aside a Judge's order on the defendant, who was an administrator, to put in special bail upon removing by certiorari into this Court a foreign attachment in the Lord Mayor's Court, that the case of an administrator was not an exception to the general rule, and that common bail was insufficient.

THIS was a motion for a rule nisi to set aside an order of Erle, J., refusing an application to rescind an order for the defendant to put in special bail on his removing by certiorari into this Court a foreign attachment in the Lord Mayor's Court.

Locke in support, on the ground that as the defendant was an administrator it was an exception to the general rule, and that common bail was sufficient.

The Court said, that as there was no authority for such exception, the rule must be refused.

Stapylton v. Croft. April 28, 1852.

LAW OF EVIDENCE ACT AMENDMENT.—EVIDENCE OF WIFE FOR DEFENDANT.

Held, making absolute a rule for a new trial, that the wife of the plaintiff or defendant cannot be admitted to give evidence on behalf of her husband under the 14 & 15 Vict. c. 99, (per Lord Campbell, C.J., Wightman, and Crompton, JJ.,—dissentiente Erle, J.)

THIS was a rule nisi granted on January 19 last, to set aside the verdict for the defendant and for a new trial of this action, which was tried before Erle, J., on the ground of the improper admission of the evidence of the defendant's wife without the consent of the plaintiff.

M. Chambers and Welsby showed cause, and referred to the 14 & 15 Vict. c. 99, s. 2, which enacts, that "on the trial of any issue," "the parties thereto, and the persons in whose behalf any such suit, action, or other proceeding may be brought or defended, shall, except as hereinafter excepted, be competent and compellable to give evidence, either *vis à voce* or by deposition, according to the practice of the Court, on behalf of either or any of the parties to the said suit, action, or other proceeding."

Huddleston and Holl in support.

The Court (per Campbell, C.J., and Wightman and Crompton, JJ.,—dissentiente Erle, J.) held, that the wife had been improperly admitted as a witness; and the rule was accordingly made absolute for a new trial.

Court of Common Pleas.

Robinson v. Gill. May 1, 1852.

COUNTY COURT.—DUTY OF CLERK TO GIVE NOTICE TO DEFENDANT OF ORDER FOR PAYMENT BY INSTALMENT.—ACTION FOR NEGLIGENCE.

Held, that it forms no part of the duty of the clerk of a County Court to give the defend-

ant in a plaint notice of an order for payment of debt and costs by instalments, and a demurrer was therefore allowed to an action on the case for negligence by the defendant in serving a notice representing the instalments were payable monthly, instead of weekly, whereby execution had issued against the plaintiff's goods, where, it was not shown he had acted from malicious or improper motives.

THIS was a demurrer to the declaration in this action, which was brought on the case against the clerk of the Birkenhead County Court for negligence. It appeared that a judgment had been obtained in the County Court against the plaintiff and another person, and an order made for payment by weekly instalments, and the declaration alleged that it was the duty of the defendant to serve a written notice thereof on the plaintiff, according to the practice of the Court, but that he had negligently served a notice representing the instalments were payable monthly, whereby the plaintiff omitted to make the payments ordered, and his goods were seized under an execution.

Cowling in support of the demurrer, on the ground that it was no part of the defendant's duty to give the information as alleged, and it was not shown that he had acted from malicious or improper motives.

Welsby for the plaintiff, contra.

The Court gave judgment for the defendant.

Court of Eschequer.

Freegarn v. Barnes and another. June 3, 1852.

WARRANT OF JUSTICES.—WHERE DIRECTED TO CONSTABLE.—ACTION FOR FALSE IMPRISONMENT.

A warrant of a justice of the peace was directed to the constable of D., held, that it could not be executed by a county policeman attached to the district in which D. was situate, and that the defendant who had so had it executed was liable in an action of trespass for false imprisonment under such warrant.

THIS was a rule nisi on leave reserved to enter the verdict for 15l. for the plaintiff in this action which was in trespass for false imprisonment. On the trial before Talfourd, J., at the last Wiltshire Assizes, it appeared that a warrant had been obtained by the defendant Barnes from a justice of the peace, directed to the constable of Dauntsey, and intrusted for execution to the defendant Barton, who was a county policeman attached to the district in which Dauntsey was situate. The plaintiff was nonsuited, subject to this rule.

Crowder and Hodges for defendant Barnes; Slade, for defendant Barton showed cause; Kinglake, S. L., and Edwards in support, on the ground the warrant could only be executed by the constable of Dauntsey as directed.

The Court said, that the plaintiff was enti-

tled, as against Barnes, to enter the verdict for the amount claimed, but that there ought to be a verdict in favour of Barton as the action had not been brought within the period of six months limited by the 24 Geo. 2, c. 44, s. 8. But upon the plaintiff's consenting to take a verdict against Barnes only, the rule was made absolute to enter the verdict for 15l.

Phillips v. Pound. June 7, 1852.

CLERK TO ATTORNEY.—ATTENDING JUDGE'S CHAMBERS.—PRIVILEGE FROM ARREST.

Held, that the clerk to a solicitor is not privileged from arrest while attending at Judge's Chambers on a summons in a cause.

A RULE nisi had been obtained on June 4 last, to discharge the defendant in this action out of custody, on the ground of privilege. It appeared he was clerk to a solicitor, and had been arrested whilst attending at Judge's Chambers on a summons in a cause.

Hassan showed cause; Hawkins in support.

The Court said, the privilege claimed had always been confined to counsel or attorneys in a cause or witnesses under a subpoena, and who were necessarily called upon to attend Courts of Justice, and the rule was accordingly discharged.

June 26.—Hickie and another v. Salomo and another.—Order for plaintiffs' costs under 13 & 14 Vict. c. 61.

—26.—Providential Assurance Company v. Johnston.—Rule absolute to set aside nonsuit and enter verdict for plaintiffs.

Eschequer Chamber.

Regina v. Oldham. May 29, 1852.

INDICTMENT FOR HAVING HOUSEBREAKING IMPLEMENTS IN POSSESSION.—QUESTION FOR JURY.

On the trial of an indictment under the 14 & 15 Vict. c. 19, s. 1, of the prisoner for being found by night, without lawful excuse, in the possession of housebreaking implements, the jury found that the articles were such as might be used for the purpose of housebreaking, and that it was the prisoner's intention to use them as such, when he was taken up: Held, that the circumstance of their also being applicable for lawful purposes, was no defence to the indictment, that the question was one for the jury, and the conviction was affirmed.

THIS was an indictment under the 14 & 15 Vict. c. 19, s. 1, against the defendant, for having been found at night without any lawful excuse, in the possession of implements of housebreaking, and on the trial it appeared that the articles in his possession might be used for other purposes than those charged in the indictment. The questions left to the jury were, whether the articles in question were such as might be used for the purpose of housebreaking, and whether it was the intention of the prisoner when they were so found in his possession to use them

for that purpose. The prisoner was found guilty, subject to the point reserved, whether the evidence was sufficient to support the indictment.

The Court said, that as the jury had found that it was the prisoner's intention to use the articles as implements of housebreaking, and it was entirely a question for the jury, it was no answer that they might be used for lawful purposes, and the conviction was therefore affirmed.

Nisi Prius.

(*Coram Jervis, L.C.J.*)

Boden v. Shaw. June 28, 1852.

DEL CREDERE COMMISSION.—STATUTE OF FRAUDS.

Held, that goods may be taken for sale under a *del credere* commission without a written

contract, and a verdict was therefore directed for the plaintiff in an action brought to recover the amount due to the plaintiff upon a sale of coals by the defendant on such a commission, where there was no contract in writing.

Byles, S. L., and *Field* appeared for the plaintiff in this action, which was brought to recover the sum of 75*l.* from the defendant, a coal-factor, upon a sale of coals by him on a *del credere* commission.

O'Malley and *Dowdewell* for the defendant, on the ground the Statute of Frauds applied, and that as there was no contract in writing the defendant was not liable.

The Court, however, said it was a different case from a contract to be answerable for the debt of another, and directed a verdict for the plaintiff for the amount claimed.

ANALYTICAL DIGEST OF CASES,

REPORTED IN ALL THE COURTS.

Courts of Equity.

[For the previous Sections of the Digest in this Volume, see

Privy Council : Appeals, p. 17.

House of Lords : Appeals, p. 38.

Courts of Equity :

Construction of Statutes, p. 104.

Law of Attorneys and Solicitors, p. 125.

Contributories under the Winding-up Act, p. 143.

Law of Trustees, p. 165.]

LUNACY.

ADVOWSON.

Sale of next presentation of rectory.—The 28th sect. of the Act, 1 Wm. 4, c. 65, confers no power to sell the right to the next presentation to a rectory of the advowson of which a lunatic is tenant in tail in possession, except for one of the purposes specified in this section. *In re Vavasour*, 3 M'N. & G. 275.

ANNUITY.

Sale of principal to purchase annuity for lunatic.—Where the income of a lunatic amounted to 21*l.* 16*s.* 11*d.* only, the Lord Chancellor refused to allow a sum of 60*l.* per annum for maintenance, but allowed part of the principal of her property to be sold to purchase an annuity of 30*l.* per annum. *In re Fisher*, 2 H. & T. 449.

COSTS.

Costs of commission payable out of fund in Court after death of lunatic.—Costs of a commission of lunacy, which had been taxed during the lifetime of the lunatic, ordered to be paid

after his death, out of funds to which he was entitled, and which at his death were standing to the credit of a cause to which he was a party. *Taylor v. Taylor*, 3 M'N. & G. 426.

Cases cited in the judgment: *Sherwood v. Sanderson*, 19 Ves. 280; *Williams v. Wentworth*, 5 Beav. 325.

DEFENDANT IN SUIT.

1. **Answer of lunatic defendant.**—Practice as to lunatic answering where he is made defendant to a bill filed by the committee of his person and estate. *Worth v. Mackenzie*, 3 M'N. & G. 363.

Cases cited: *Snell v. Hyat*, 1 Dick. 287; *Poyser v. Manning*, Reg. Lib. B. 1845, fo. 386.

2. **Substitution of new committee.**—In a suit to which a lunatic and his committee were defendants, the Court declined, before decree, to make an order, on motion, substituting a new committee as a defendant. *Rudd v. Speare*, 3 De G. & S. 374.

3. **Not found lunatic by commission.**—*Guardian ad litem appointed on motion.*—A guardian ad litem to a defendant shown by affidavit to be a lunatic, but not so found by inquisition, appointed without a commission. *Piddocke v. Smith*, 9 Hare, 395.

4. **Guardian ad litem.**—Where defendants had taken no proceedings until the last day allowed for putting in their answer, when they obtained an order for further time, but afterwards obtained the appointment of a guardian ad litem, on the ground that they were of unsound mind, the Court refused an application of the plaintiff, under the 32nd Order of May, 1845, to appoint a guardian for them, on the ground that they were in default for want of answer. *Saunders v. Walter*, 2 H. & T. 199.

FOREIGN CURATOR.

1. *Lunacy*.—*Transfer of stock to curator of Dutch lunatic*.—Order made on the application of the curator of a lunatic resident in Holland for the transfer to him of the corpus of funds in England to which the lunatic was entitled. *In re Elias*, 3 M'N. & G. 234.

2. *Transfer of stock to curator bonis of lunatic*.—*Payment of dividends accrued due*.—An application of a curator bonis of a lunatic, appointed by the Court of Session in Scotland, for the transfer of stock standing in the lunatic's name in the Bank of England, (the property of the lunatic,) into the curator's name, was refused; but the dividends which had then accrued thereon were ordered to be paid to him. *In re Stark*, 2 H. & T. 467.

Case cited: *In re Morgan*, 1 H. & T. 212.

FRAUD.

1. *Setting aside conveyance on ground of lunacy of grantor and other collateral circumstances of fraud*.—*Where fraud not supported*.—A bill was filed to set aside a deed of conveyance 27 years after its execution, on the ground of the lunacy of the grantor and other collateral circumstances of fraud. At the hearing of the cause these collateral circumstances were not established: *Held*, dismissing the bill, that the plaintiff was not entitled to an issue to try the question of the lunacy of the grantor. *Price v. Berrington*, 3 M'N. & G. 486.

2. *Conveyance when only avoidable or void*.—Whether a conveyance executed by a lunatic is absolutely void in the absence of notice of the lunacy to the party claiming under the conveyance, and of all circumstances of fraud, (*Molton v. Camroux*, 2 Exch. Rep. 487, and in *Error*, 4 Exch. Rep. 17,) *quære*.

Whether such a conveyance is voidable, and if so, under what circumstances, *quære*.

Such a conveyance executed under circumstances of fraud, the lunacy being one of those circumstances, might be set aside. *Price v. Berrington*, 3 M'N. & G. 486.

Cases cited in the judgment: *Niell v. Morley*, 9 Ves. 478; *Sergeson v. Senley*, 2 Atk. 412; *Maguire v. O'Reilly*, 3 Jones & L. 224; *Ferraby v. Hobson*, 2 Phill. 255; *Glascott v. Lang*, 2 Phill. 310; *Wilde v. Gibson*, 1 H. of L. 605.

JURISDICTION.

Property of person resident and found lunatic abroad.—This branch of the Court has jurisdiction to order the income of the fortune of an infant resident abroad and there found a lunatic, to be applied for his benefit, without the petition being heard by the Lord Chancellor. *Volans v. Carr*, 2 De G. & S. 242.

MASTER'S REPORT, CONFIRMING.

A party cannot be heard against the confirmation of the Master's report in lunacy, without presenting a cross petition in the nature of exceptions to the Master's report. *In re Saunders*, 3 M'N. & G. 219

Case cited in the judgment: *In re Richardson*, 3 M'N. & G. 220, n.

PARTNERSHIP.

Dissolution.—Decree made for the dissolution of a partnership in consequence of the lunacy of one of the partners. *Leaf v. Coles*, 1 De G., M'N. & G. 171.

STOP ORDER.

Assignees of the interest of sole next of kin.—Order in the nature of a stop-order granted on the application of the assignees of the interest of the sole next of kin of a lunatic, but dispensing with notice to the assignees of any applications in the matter except those respecting payments to the next of kin. *In re Pigott*, 3 M'N. & G. 268.

Case cited: *In re Moore*, 1 M'N. & G. 103; *La re Alchin*, ib. n. (a).

TENANT FOR LIFE.

Reference to Master as to rebuilding premises burnt down.—A. B., being devisee for life of premises, with a condition against committing any manner of waste and for keeping the same in good and tenantable repair, became lunatic, and the premises were subsequently destroyed by accidental fire. A petition was then presented by the committee of the person who was also remainder-man, praying a declaration that the premises ought to be rebuilt at the expense of the lunatic's estate, and a reference as to the amount of such expense, and out of what fund it ought to be defrayed. The Lord Chancellor made an order for the reference, holding that the words of the will created an obligation upon the tenant for life to rebuild the premises, and that the question of such liability was rightly brought before the Court on the petition. *In re Skingley*, 3 M'N. & G. 221.

TRUSTEES RELIEF ACT.

Payment out of funds in Court to guardians of poor for maintenance of Lunatic.—Order made on a petition presented by guardians of the poor under the Trustees' Relief Act, 10 & 11 Vict. c. 96, for payment to them out of a fund paid in by trustees in which a lunatic was interested of sums expended by the guardians in the support of the lunatic, the Lord Chancellor holding that by the act the Court was placed in the position of the trustees, and that the trustees might have made the payment under the 7 & 8 Vict. c. 101, s. 27. *In re Upfall*, 3 M'N. & G. 281.

LAW RELATING TO INFANTS.

CREDITOR.

Infant.—*Heir-at-law*.—*Settlement*.—A., being indebted to a larger amount than his personal estate was sufficient to pay, died intestate as to his real estate, which descended upon his daughter and heiress-at-law, a minor. The daughter married during her minority, having entered into articles to settle the estates, upon attaining her majority, for the benefit of the parties to, and the issue of the marriage, with power to vary the settlement within six

months after she attained her age of 21 years. After the said six months had expired, the estates were settled, with power of revocation; and, by a subsequent deed, the uses were revoked, and the same estates were appointed to trustees for sale, and payment of the debts of A., and, subject to such trusts, for the benefit of the husband and wife, and issue of the marriage. After the death of the wife, the deeds of settlement and appointment were set aside at the suit of one of the children of the marriage, and the estates decreed to be re-conveyed to the uses expressed in the articles: *Held*, subsequently, in a suit by a creditor of A., that the real estate was subject to the payment of such parts of A.'s debts as his personal estate was insufficient to pay. *Pimm v. Insall*, 7 Hare, 193.

CUSTODY OF INFANTS.

1. *Conduct of father.*—*Provision for maintenance and education by covenant of mother-in-law.*—Before the jurisdiction of the Court to deprive a father of the guardianship of his children can be called into action, the Court must be satisfied that the father has so conducted himself, or placed himself in such a position, as to render it not merely better for the children, but essential to their safety or welfare, that the father's rights should be interfered with (except in the cases within the 2 & 3 Vict. c. 54).

Although the circumstance of the children being in the custody of the mother excludes the operation of the 2 & 3 Vict. c. 54, the provisions of that act are proper to be regarded in considering an application by her to retain such custody, and to restrain the father from interfering with it.

Conduct showing the father to be a person to whose guardianship it would be very objectionable to intrust children, *held* sufficient ground for depriving him of their custody, and for providing otherwise for their care, maintenance, and education, where such a provision can, by an actual appropriation of property or otherwise, be effectually secured.

But where the only security proposed was a deed of covenant of the infants' mother-in-law to provide for the maintenance and education of the children for her life, *held*, that such conduct was not sufficient to enable the Court to interfere. *In re Fynn*, 2 De G. & S. 457.

2. *Petition of mother.*—*Jurisdiction.*—If, independently of the Act of 2 & 3 Vict. c. 54, the Court can exercise jurisdiction upon the petition of a mother having the custody of her infant child, for the continuance of such custody, it may do so, although the petition is intitled in the matter of that Act as well as in the matter of the infant. *In re Tomlinson*, 3 De G. & S. 371.

3. *Where mother lives separate from father.*—*Equity of statute.*—Where the mother of an infant under seven years of age, and having custody of it, is living separate from the father, and has a good defence to a suit by him for restitution of conjugal rights, the

Court may make an order continuing to the mother the custody of the infant, such a case, although not within the letter, being within the equity of the 2 & 3 Vict. c. 54. *In re Tomlinson*, 3 De G. & S. 371.

4. *Misconduct of father.*—A father left his home where he was residing with his wife and children, infants, four daughters, then ten, nine, eight, and four years of age, and two sons, aged six and three years. He was apprehended, committed, and arraigned for the commission of an unnatural crime, but no witnesses appearing he was acquitted. He immediately left England and remained abroad eight months. Five years after the trial, he petitioned this Court praying that his wife might be ordered to deliver up the children, (the daughters being fifteen, fourteen, thirteen, and nine years old, and the sons eleven and eight,) and, if necessary, that writs of *habeas corpus* might issue for that purpose. The petition was supported by the affidavit of the petitioner, and was served on the wife only. Affidavits were filed on behalf of the respondent, and amongst them an affidavit of the solicitor of the wife, who had been the solicitor for the petitioner, and in that capacity had interviews with him while in gaol awaiting his trial offering to state conversations that took place between them, if authorised by the petitioner so to do, and an affidavit by another witness referring as an exhibit to the depositions taken before the magistrates. The petitioner himself made two affidavits in reply, in one of which he denied the charge against him, and in the other, sworn three days later, he again denied the charge, and gave an explanation of the cause why he was at the place where, and in the company in which he was when apprehended. The Court being satisfied upon the materials before it that the petitioner had so conducted himself as that he ought to be treated as if he were a guilty man, dismissed the petition. *Anonymous*, 2 Sim. N. S. 54.

5. *Effect of father's misconduct on their welfare.*—*Habeas corpus.*—The Court will refuse to give possession of children to their father if he has so conducted himself as that it will not be for the benefit of the infants, or if it will affect their happiness, or if they cannot associate with him without moral contamination—or if, because they associate with him, others will shun their society. If it be established to the satisfaction of the Court, that the father of children from ten to two years of age is to be considered guilty of the perpetration of an unnatural crime, it is impossible to permit any sort of intercourse with his children, even after he has escaped conviction. *Semble*, that under such circumstances, if the children were with their father, it would be the duty of the Court to remove them. *Anonymous*, 2 Sim. N. S. 54.

GUARDIAN AD LITEM.

Production in Court.—The Court appointed a guardian ad litem to an infant defendant, without his production in Court, upon an affidavit that the infant was only 19 days

child, and a medical certificate that the infant could not be safely produced. *Stutely v. Harrison*, 3 De G. & S. 394.

MAINTENANCE.

1. *Liability of widow to support her infant children.*—After the death of their father, infants petitioned for an allowance for maintenance out of their fortunes: *Held*, that such maintenance was to be determined irrespective of the means of their mother to support them out of her own fortune. *Douglas v. Andrews*, 12 Beav. 312.

2. *Order for future increase.*—Upon the petition of an infant plaintiff for an order for present maintenance and education, and to provide for a future increased allowance on his entering at a specified time and continuing at the university, the Court ordered a present allowance, and made a prospective provision for an increased allowance from the future date until 21, or the further order of the Court, to be applied by the testamentary guardian of the infant. *Nunn v. Harvey*, 2 De G. & S. 301.

3. *Bonus on a life policy.*—Petition.—A bonus on a policy settled on trusts, under which an infant was entitled contingently on attaining 21, directed, on petition without suit, to be anticipated and applied for maintenance of the infant. *Esparto Hays, in re Hays*, 3 De G. & S. 485.

4. *Reference directed by decree.*—In a suit for the administration of an estate in which an infant is interested, it is not necessary to present a petition for a reference as to the maintenance of the infant. The Court will direct the reference by the decree. *Cross v. Beavan*, 2 Sim. N. S. 53.

MARRIAGE ARTICLES.

1. *Executed by heiress-at-law in contemplation of marriage.*—Effect of, on rights of simple contract creditors.—Where the personal estate of a debtor was insufficient to discharge all his debts, the right of his simple contract creditors to have their debts satisfied out of his real estate, which had descended to his heiress-at-law, was held not to have been defeated by articles executed by her while still a minor, previously to and in contemplation of her marriage. *Pimm v. Insall*, 1 H. & T. 487; 1 M'N. & G. 449.

Cases cited in the judgment: *Clough v. Clough*, 5 Ves. 710; *Simson v. Jones*, 2 Russ. & M. 365.

Whether a settlement executed pursuant to such articles after the institution of such suit, would have that effect, *quære*?

Observations on the practical consequences, in possible cases, of the doctrine established in *Spackman v. Tymbre*, 8 Sim. 253, that an heir or devisee may, by alienation of the descended or devised estates, place them out of the reach of the ancestor's or deviser's creditors, while he remains personally liable to them for the value of the estates. *Pimm v. Insall*, 1 M'N. & G. 449.

2. *Husband and wife.*—Articles made upon

the marriage of a minor, covenanting to settle her real estate on attaining her majority, for the benefit of herself and her husband and the issue of her marriage, preclude the husband, during the coverture, from doing or concurring in any act inconsistent with the articles, but are not binding upon the wife. *Pimm v. Insall*, 7 Hare, 193.

MISREPRESENTATION OF AGE.

1. *Release by infant representing himself as of age.*—*Impeachment of by.*—Where a person represents to another that he is of age, and executes to him a release, upon which the latter acts: *Held*, that he could not afterwards impeach the validity of the release on the ground of his minority; and that it was immaterial whether he was aware or not of the incorrectness of the representation. *Wright v. Snowe*, 2 De G. & S. 321.

2. *Release to executrix by infant legatee stating himself as adult.*—*Onus probandi.*—Where the answer of an executrix alleged a release to have been executed by the plaintiff, a legatee, and that he had then stated that he was of age, but contained admissions from which his minority at the time might be inferred: *Held*, that such admissions did not entitle the plaintiff to an inquiry whether he was a minor at the date of the transaction. *Wright v. Snowe*, 2 De G. & S. 321.

MORTGAGE.

Extending time for payment of money.—Even in the case of infants, the Court will only extend the time for payment of the mortgage-money, upon the terms of immediate payment of the interest and costs. *Coombe v. Stewart*, 13 Beav. 111.

PARTITION.

Where one moiety of estate held in trust for infants.—In a suit for partition, it appeared that the estate was vested, as to one moiety, in A. in fee, and, as to the other moiety, in B. in fee, but in trust for infants.

Held, that a conveyance from B. and the decree of the Court, would give A. a good title to the tenements allotted to him; and, therefore, that it was not necessary to order the infants to convey when they came of age. *Cole v. Sewell*, 17 Sim. 40.

TENANT IN TAIL.

Decree.—*Day to show cause refused until hearing on equity reserved.*—At the hearing of a cause to which an infant, who was the first tenant in tail under a settlement, was a defendant, the Court made a declaration as to the intention of the parties to the settlement, which bound the infant's inheritance, and sent a case for the opinion of a Court of Law as to the true construction of the settlement, but, it refused to give the infant a day to show cause against the decree until the hearing on the equity reserved, when it would appear whether the infant would be required to execute a conveyance or not. *Walsh v. Trevellick*, 16 Sim. 150.

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SATURDAY, JULY 10, 1852.  
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PROFESSIONAL CANDIDATES FOR PARLIAMENT.

DUTY OF PROFESSIONAL ELECTORS.

The engrossing topic just at present in town and country, is the elections past and pending.

The unusual number of aspirants for parliamentary honours connected with the Legal Profession is the subject of much observation, and, it must be confessed, has afforded some materials for ridicule. The Professional Candidates are not now confined to the most prominent and distinguished members of the Profession. Every shade of political opinion, from red-hot Radicalism to the most cautious Conservatism, finds a professional exponent at the hustings. From Mr. *Briefless* the little known, to Mr. *Bagfull* the famous Circuit Leader, it would seem as if every member of the Bar by virtue of his *call* deemed himself eminently qualified to represent county, city, or borough, as the case may be. It is difficult to conjecture what has occasioned this sudden and all but universal passion to serve the country in Parliament.

It is a great mistake to suppose that professional distinction necessarily follows from having a seat in the House of Commons. Premature parliamentary success has frequently proved destructive to promising professional prospects. It is quite true that a large proportion of the highest prizes of the Profession have fallen to the share of those who have united parliamentary honours with great professional eminence. To say nothing of the Lord Chancellor, and the Chiefs of the three Common Law Courts, all of whom have held offices under various administrations, to the useful discharge of the duties of which, a seat in the

House of Commons has been long deemed indispensable, we find that the two Lords Justices, one of the Justices of the Court of Queen's Bench, one of the Barons of the Court of Exchequer, and three of the Justices of the Common Pleas, have had seats in Parliament before their promotion to the Bench. On the other hand, two of the Vice-Chancellors and seven of the Common Law Judges have been elevated to the Bench without ever sitting in Parliament. It cannot be said, therefore, that the House of Commons is the *only* road to judicial honours.

It may be suggested, however, that the depressed condition of the Legal Profession, and the limited chances it affords for honour or distinction, has impelled professional men to endeavour to "achieve greatness" by other means. It may be admitted that this consideration has influenced a certain number of the professional candidates for parliamentary honours, but it is far from being clear, that men who have exchanged a professional for a political career, will find their position or prospects substantially improved by the change. Looking to the Profession as a whole, we are not satisfied that its interests will be advanced by any great augmentation of the number of professional men in Parliament. Judging from the past, we are constrained to admit, that the character of the Profession has not been elevated in the opinion of the public, by the conduct and bearing of many amongst its members who have had seats in Parliament. Men in the foremost rank of the Profession have too readily abandoned their recorded opinions in deference to the exigencies of party. Talent, learning, and eloquence have been associated with great private worth, but there are few professional men who can be pointed to, like the late Sir Charles Wetherell, as having sacrificed

office by adherence to their well-considered opinions. There are many professional candidates who, it may be safely predicted, can gain little and may lose much by being elected. To this somewhat too numerous class we do not wish success at the hustings, but that it may be reserved for them in a different and a more congenial sphere. There are many members of the Profession, however, we should gladly see in Parliament, under the conviction that they would improve their own position, confer honour on the Profession, and uphold its legitimate interests in combination with those of the general public.

Having indulged in this unreserved announcement of sentiment on professional candidature, without regard to persons or political parties, may we be excused for suggesting to professional readers, why, assuming other considerations not to operate, they should prefer voting for a lawyer rather than a layman? If lawyers are better acquainted with the interest of their own Profession than other men, past experience of their conduct in Parliament affords no assurance that they are better disposed than other members to uphold professional interests. Nothing of this kind can or ought to be reckoned upon. It is notorious, however, that a prejudice exists, which prevents many from voting for candidates in all respects unexceptionable, merely because they happen to be lawyers. The existence of this absurd and unreasonable prejudice, places a professional candidate under manifest disadvantages. The members of his own Profession, who cannot participate in such an ungenerous feeling, should endeavour to counterbalance the influence of this unfounded prejudice by giving their support, whenever it can be done without a compromise of honour or principle, by voting for the professional candidate. There are only a few instances in which members of the Legal Profession have presented themselves as rival candidates, and we regret to find any such instance. In such cases it would be wholly beside our purpose to give expression to any sentiment, which could be supposed to have an individual application. All we venture to impress upon our professional brethren is, that upon this, as on every other occasion, it is just and expedient to stand by our order.

In another part of the present Number we have given lists of the lawyer-candidates, as well new as old, including not only those who still belong to the Profession in either

of its branches, but those who were formerly members, and have happily or otherwise retired from its labours and emoluments.

THE NEW COUNTY COURTS' ACT.

WE are not yet aware by what general designation the new Act of 15 & 16 Vict. c. 54, will be popularly known. Down to a few days before it passed both Houses, it was called "*The County Courts further Extension Bill*;" but as it only "*extended*" the salaries of the Judges, and not their jurisdiction, it became necessary to correct the title, and make it more consistent with its purport. Instead, therefore, of a Bill "*further to extend the Jurisdiction of the Judges of the County Courts and to facilitate Proceedings in the High Court of Chancery*," it has received the Royal Assent as "*An Act further to facilitate and arrange Proceedings in the County Courts*."

The most important matter in the new Act is the alteration effected in the so called "*Advocacy Clause*," under which it is attempted to prevent one attorney from acting as the *agent* of another, in order that the client may be compelled to employ a barrister, wherever the attorney from illness or any other cause is prevented from personally attending. Now, as it frequently happens that one barrister holds the brief of another, we do not perceive how, in justice, the Court can refuse to hear an attorney acting as the agent of another. This is left, it appears, to the *discretion* of the Judge. We shall see whether the suitor will be deprived of his right of changing his attorney and subjected to a nonsuit, or a verdict against him, unless he employs a barrister; and the Superior Courts will have to decide, or the public to consider, whether this additional expense should be tolerated.

The next prominent part of the Act is the power given to fix a scale of costs, as well between attorney and client, as between party and party. The future success of these Small Debt Courts will much depend on the just and reasonable allowances to be made to the successful suitor against his wrongful opponent. At present the hearing fee only is chargeable, not the previous preparation for the trial. We presume, the proposed scale will be made known to the Profession before it is adopted, and an opportunity afforded to the practitioners to bring their views and suggestions

under the consideration of the Five Judges of the County Courts to whom the duty is to be delegated by the Lord Chancellor. The Judges of the Superior Courts who are finally to settle the scale will, of course *hear* before they *decide*.

To show the haste with which the Act was altered at the last moment, it may be mentioned that the running title at the head of the printed Act still continues as "County Courts *further Extension*," instead of "County Courts proceedings,"—the latter being the substance of the amended title of the Act. And what is a stronger evidence of haste and negligence is, that the marginal abstract of the 10th section is thus given:—"Provision of 9 & 10 Vict. c. 95, as to persons qualified to practise before County Courts *not to extend to this Act*." If this were a true analysis of the clause, it would be purely nugatory, for the 9 & 10 Vict. is not extended, for all the contemplated extension of jurisdiction has been struck out. The truth is, that this marginal abstract has been copied from the Bill of two years ago, when the jurisdiction was extended from 20*l.* to 50*l.*, and in the higher class of actions it was then evidently intended to give a preference to barristers, but the proposition was negatived by Parliament. Now, the section applies to sums below as well as above 20*l.* So much for the consistency of some of our legislators. See the Act, p. 194, *post*.

ATTORNEYS CERTIFICATE DUTY.

WHEREVER there was a vacancy in the representation during the last Parliament, the solicitors in the district were reminded of the necessity of urging their just claims on the attention of the candidates; and, with few exceptions, we believe that the Profession has done its duty.

The Law Society, having charge of the proceedings to be adopted, and having the management of the case in London, has not failed to call the attention of the provinces to the necessity of using their influence in the elections for the New Parliament.

We are aware that many eminent solicitors, to whom the payment of the tax is of small consideration, are reluctant, amidst the present important conflict of the great parties in the state, to embarrass their friends and clients with the personal claims of the Profession. But they should bear in mind that the relief which is required amounts merely to a drop in the ocean of the national income. The impost in ques-

tion is but as one in five hundred of the total annual revenue, and they should recollect, for the sake of their less fortunate brethren, that the tax is unparalleled in its oppressiveness, and altogether unexampled in its injustice and inequality.

We trust, therefore, that every one who is able to render service to the candidates, will in return call for the performance of a simple act of justice, hitherto so long withheld.

There can be no doubt that the noble Lord, the late representative for the Metropolitan County, will be again returned to Parliament; and we understand that already his Lordship has promised to continue his exertions in support of a cause which he has for so many Sessions ably and constantly advocated, and the Bill will doubtless again make its appearance at the very commencement of the next Session.

Having carefully collected a list of petitions of last Session, presented from all parts of the country, as well as from Ireland and Scotland, with the names of the members who presented them, it may be useful to place it before our readers as the result of some of the exertions which have been made in support of the repeal,—showing, at least, that the zeal in furtherance of the measure continues unabated.

PETITIONS PRESENTED.—SESSION 1852.

Abergavenny, Mr. *Chas. Octavius S. Morgan*.
 Alford, Mr. *Christopher*.
 Andover, Mr. *Coles*.
 Armagh, County, Sir *Wm. Verner*.
 Ashburton, Colonel *Matheson*.
 Ashby-de-la-Zouch, Mr. *Farnham*.
 Atherstone, Mr. *Newdegate*.
 Barnsley, Mr. *E. B. Denison*.
 Barnstaple, Mr. *Richard Bremridge*.
 Barton-on-Humber, Mr. *Christopher*.
 Belfast, Mr. *Tennant*.
 Berwick-on-Tweed, Mr. *J. C. Renton*.
 Beverley, Mr. *Lane Fox*.
 Bideford, Mr. *Richard Bremridge*.
 Birkenhead, Sir *Philip Egerton*.
 Blackburn, Mr. *James Pilkington*.
 Bolton,
 Boston, Mr. *Freshfield*.
 Bradford (Wilts), Mr. *Sotherton*.
 Brentwood (Essex), Mr. *Thos. Wm. Bramston*.
 Bridgnorth, Mr. *Mullings*.
 Brighton, Lord *A. Hervey*.
 Bristol, Mr. *Henry Berkeley*.
 Bungay (Suffolk), Sir *Edw. S. Gooch, Bart.*
 Burnley, Mr. *James Heywood*.
 Burslem, Mr. *Smith Child*.
 Cardigan, Mr. *Pryse Lovedon*.
 Castleford,
 Cavan, Sir *John Young*.
 Chapel-en-le-Frith, Mr. *Evans*.

- Chatham, Viscount *Englefeld*.
 Chelmsford, Lord *Robert Grosvenor*.
 Chichester,
 Chorley, Mr. *Wilson Patten*.
 Clitheroe, Mr. *M. Wilson*.
 Colne, Mr. *Wilson Patten*.
 Congleton, Sir *P. Egerton*.
 Cork, County, Mr. *Roche*.
 Cork, Colonel *Chatterton*.
 Coventry, Right Hon. *Edward Ellice*.
 Crickhowell, Mr. *Joseph Bailey*.
 Darlington, Mr. *Granger*.
 Deddington (Oxon), Sir *Granville Vernon Harcourt*.
 Dewsbury (Yorkshire), Mr. *E. B. Denison*.
 Dover, Sir *George Clerk*.
 Down, Lord *R. Grosvenor*.
 Downham Market, Mr. *Philip Bennet*.
 Downpatrick, Mr. *Hardinge*.
 Dublin, Mr. *Napier*.
 Dunstable, Colonel *Gilpin*.
 Durham, Mr. *James Farrer*.
 Basingwold, Mr. *E. S. Cayley*.
 Edinburgh, Mr. *William Forbes*.
 Edinburgh, Mr. *Cowan*.
 Edinburgh, Society of Solicitors at Law,
 Lord *R. Grosvenor*.
 Epsom, Mr. *Henry Drummond*.
 Epworth, Lord *R. Grosvenor*.
 Exeter, Sir *John Duckworth*.
 Fakenham, Mr. *Anstey*.
 Falmouth, Mr. *Gwyn*.
 Fermanagh, Mr. *Whiteside*.
 Fife and Cupar, Eastern district of, Mr. *Edward Ellice*.
 Fife and St. Andrews, Eastern district of, Mr. *Edward Ellice*.
 Fishguard, Viscount *Emlyn*.
 Framlingham, Sir *E. S. Gooch*.
 Frome, Colonel *Boyle*.
 Gainsborough, Mr. *Christopher*.
 Galway, Mr. *Henry Grafton*.
 Galway, Lord *R. Grosvenor*.
 Glamford Briggs,
 Glasgow, Mr. *A. Hastie*.
 Glastonbury, Mr. *William Miles*.
 Gloucester, Mr. *Henry Hope*.
 Grantham, Lord *R. Grosvenor*.
 Great Grimby, Mr. *Edward Hemeage*.
 Harlestone, Mr. *Wodehouse*.
 Haverfordwest, Mr. *Evans, Q. C.*
 Hertford, Lord *Mahon*.
 Holywell, Mr. *Mostyn*.
 Horbury, Mr. *E. B. Denison*.
 Hexham,
 Hitchin, Mr. *Thomas Plumer Halsey*.
 Honiton, Mr. *Locke*.
 Horncastle, Mr. *Christopher*.
 Horsham, Sir *Charles Barrall*.
 Ilfracomb, Mr. *Richard Bremridge*.
 Incorporated Law Society, Lord *R. Grosvenor*.
 Ireland, Society of Attorneys and Solicitors of, Mr. *George Hamilton*.
 Keighley (York, W. R.), Mr. *Rd. Cobden*.
 Kendal, Alderman *Thompson*.
 Kentish Town, Lord *Dudley Stuart*.
 Kildare, Marquis of *Kildare*.
 Milkenney Mr. *Sullivan*.
 King's County, Sir *A. Armstrong*.
 Kingston-upon-Hull, Mr. *Clay*.
 Knaresboro', Mr. *B. Westhead*.
 Lancaster, Mr. *Thomas Greene*.
 Ledbury, Mr. *Thomas William Booker*.
 Leeds, Mr. *William Beckett*.
 Leighton Buzzard, Colonel *Gilpin*.
 Limerick, Mr. *Monseil*.
 Lincoln, Col. *Sithorp*.
 Lincoln, Mr. *Christopher*.
 Liverpool, Sir *Thos. B. Birch*.
 Londonderry, Captain *Bateson*.
 Loughborough, Mr. *C. W. Packe*.
 Louth, Mr. *Christopher*.
 Luton, Mr. *Hastings Russell*.
 Maidenhead, Mr. *R. Palmer*.
 Malmesbury, Mr. *Mullings*.
 Manchester, The Attorney-General.
 Margate, Sir *Brook Bridges*.
 Martock and Stokes-under-Hamden, Mr. *Wm. Miles*.
 Mayo, Mr. *Higgins*.
 Melksham, Mr. *Sotheran*.
 Metropolitan and Provincial Law Association, Mr. *Mullings*.
 Midhurst, Right Hon. *Spencer H. Walpole*.
 Mordbury, Sir *John Yarde Buller*.
 Monmouth, Mr. *Crawshaw Bailey*.
 Montgomery, Mr. *Pugh*.
 Meath, Mr. *Corbally*.
 Narbeth, Mr. *Evans, Q. C.*
 Newcastle Emlyn, Mr. *D. A. S. Davies*.
 Newcastle-on-Tyne, and Gateshead, Mr. *Headlam*.
 New Malton, Mr. *E. S. Cayley*.
 Northallerton, Mr. *Wrightson*.
 Northampton, Mr. *Vyse*.
 Northamptonshire, North, Mr. *Augustus Stafford*.
 Northamptonshire South, Captain *Vyse*.
 Northumberland, Mr. *Savile Ogle*.
 North Walsham, Mr. *Cobbold*.
 Norwich,
 Okehampton, Mr. *Bremridge*.
 Oldham, Mr. *Lane Fox*.
 Ottery St. Mary, Sir *R. Lopes*.
 Oxford, Sir *Wm. Page Wood*.
 Pembroke, Mr. *Evans, Q. C.*
 Peterborough, Mr. *Thomas Conolly*.
 Petworth, Mr. *Richard Prime*.
 Pickering, Mr. *C. Octavius Duncombe*.
 Plymouth, Sir *R. Lopes*.
 Pontefract, Mr. *Richard Mockton Miles*.
 Portsea, Sir *Francis Baring*.
 Portsmouth, Mr. *Crompton*.
 Pwllheli, Mr. *Bulkeley Hughes*.
 Queen's County, Mr. *Vesey*.
 Ramsgate, Sir *Brook Bridges*.
 Reading, Mr. *J. F. Stafford*.
 Redruth, Mr. *Pendarves*.
 Richmond (Yorkshire), Mr. *Rich*.
 Ripon, Mr. *Edwin Lascelles*.
 Rochdale, Mr. *Sharmar Crawford*.
 Ross, Mr. *G. Cornwell Lewis*.
 Roscommon, Mr. *Grace*.
 Rugby, Mr. *Richard Spooner*.
 Saffron Walden, Mr. *Beresford*.

Salisbury, Mr. Christopher.
 Scotland, Society of Solicitors in Supreme
 Courts of, Lord R. Grosvenor.
 Shepton Mallett, Mr. William Miles.
 Sligo, Sir R. G. Booth.
 Solihull, Mr. Charles N. Newdegate.
 Somerton and Langport, Mr. C. A. Moody.
 Southampton, Sir Alexander Cockburn.
 Southmolton, Mr. Bremridge.
 South Shields, Mr. Wawn.
 Stamford, Marquis of Granby.
 Stone Stratford, Mr. Adderley.
 Stowmarket, Mr. Philip Bennet.
 Stratford-on-Avon, Lord Guernsey.
 Sudbury, Sir John Walsh.
 Suffolk, Mr. Henry Waddington.
 Sussex, Mr. J. Abel Smith.
 Swansea, Mr. John Henry Vivian.
 Tenby.
 Tenterden, Mr. Law Hodges.
 Tewkesbury, Mr. John Martin.
 Thetford, Mr. Mullings.
 Thirsk.
 Thorne, Mr. Richard Cobbden.
 Tipperary, Lord R. Grosvenor.
 Todmorden, Mr. William Brown.
 Trowbridge, Mr. Long.
 Upton-on-Severn, Hon. H. B. Lygon.
 Uxk, Mr. Charles Octavius S. Morgan.
 Uttoxeter, Mr. Charles B. Adderley.
 Wakefield, Mr. George Sandars.
 Walsall, Mr. Littleton.
 Wareham, Mr. Ker Seymer.
 Warminster, Right Hon. Sidney Herbert.
 Warrington, Lord R. Grosvenor.
 Warwick, Lord Robert Grosvenor.
 Waterford, Mr. Meagher.
 Wellington (Somerset), Mr. Gore Langton
 Ditto, ditto, Mr. C. A. Moody.
 Wellington.
 Wem, Mr. W. Ormsby Gore.
 Wexford, Lord R. Grosvenor.
 Weymouth, Col. Preestun.
 Whitby, Mr. Stephenson.
 Wicklow, Viscount Milton.
 Wigton, Mr. Charles Howard.
 Wils, Mr. Sotherton.
 Windermere and Grasmere, Col. Lowther.
 Witney, Sir William Page Wood.
 Wolverhampton, Viscount Lewisham.
 Worcester, Mr. Osman Ricardo.
 Workington, Mr. Edward Stanley.
 Worthing, Sir Charles Burrell, Bart.
 Wrexham, Mr. Wm. Bagot.
 York, Mr. Smyth.

NOTICES OF NEW BOOKS.

A Manual of the Parliamentary Election Law of the United Kingdom of Great Britain and Ireland. By SAMUEL WARREN, Esq., F.R.S., of the Inner Temple, One of her Majesty's Counsel. London: Butterworths. Edinburgh: Blackwood. 1852.

We have just had an opportunity of per-

using this well-timed and excellent work; and at present can only very briefly call the attention of our readers to its general scope and the skilful manner in which it has been executed. The work is well calculated to afford a practical, complete, comprehensive, and systematic view of the electoral system of Great Britain:—throwing light on apparently dry, intricate, and repulsive details, by showing distinctly the objects which they were designed to secure, and the grounds assigned by the Legislature itself for its interference. Mr. Warren has presented a faithful view of the operations of the Legislature, on the subject of the franchise, from the year 1832 down to the close of the late Parliament, leaving the Legislature to speak for itself, by its acts and by its leading members of all parties, in the deliberation which preceded those acts. After an admirable introduction, Mr. Warren treats of the existing state of the Law under the following heads:—

1. As to the present arrangement of places returning members.
2. The constitution of the franchise.
3. The method of ascertaining it by registration.
4. The incapacities for electing.
5. The qualifications and disqualifications for being elected.
6. The mode of exercising the franchise through the agency of the returning officer and his staff of functionaries.
7. The mode in which a voter may throw away his vote.
8. Forces by which the exercise of the franchise may be disturbed and defeated,—viz., by undue interference, by intimidation, violence, bribery, and treating.
9. The ultimate adjudication upon the exercise of the franchise, when impeached by electors or candidates, by the House of Commons.

The work will be eminently useful to parliamentary solicitors and agents, clerks of the peace, town clerks, revising barristers, counsel, members of the House of Commons, and candidates and their friends. All these classes may consult this work readily and with confidence; for every effort has been made to secure correctness and clearness of statement, and the author has combined readiness of reference with copiousness of practical details; so that all persons officially or professionally concerned in the anxious and responsible duties dependent upon the administration of Election Law, may find their account in consulting this Treatise. We

are not aware of any other extant, of so comprehensive a scope, carefully based throughout on the existing Common and Statute Law relating to elections, including the very latest Acts of the recently dissolved Parliament. Indeed, there have been so many recent statutes affecting the very substance of Election Law, that it is not only inexpedient, but dangerous, to rely on any work framed upon a different principle from the present.

LAW OF ATTORNEYS.

PRIVILEGED COMMUNICATIONS.

In a recent case, the plaintiff sought to have a deed set aside, on the ground of the fraudulent insertion of a particular clause. The defendants insisted that the plaintiff had notice of the clause in question, and proceeded to examine the plaintiff's solicitor in support of this issue. To this interrogatory the solicitor demurred, on the ground that it inquired respecting matters about which he had obtained information by means of confidential communications made to him in the course of his agency as solicitor for his client, the plaintiff. The cause came on before Vice-Chancellor *Parker*, who in his judgment said,—

"In this case, the defendant Sanders proposes to examine Mr. Philip Goode as a witness. Mr. Sanders is a solicitor, and was concerned in that character for one of the plaintiffs in the transactions to which these suits relate. Mr. Goode has demurred to one of the interrogatories on which he is sought to be examined, on the ground that it inquired respecting matters about which he had only obtained information by means of confidential communications made to him by or in the course of his agency for his clients, the plaintiffs, during the period he was acting for them, in his capacity as a solicitor.

"One object of the suit is to set aside a deed on the ground of fraud, the plaintiffs alleging that a material clause contained in it was not communicated to them until a recent period. The defendant, Sanders, by his answer alleges, that the clause was known to the plaintiffs much earlier; and that at an interview between Sanders and Mr. Goode, the latter produced to Sanders a copy of the deed, and copied the clause in question into an imperfect draft or copy belonging to Sanders. By the interrogatory, to which Mr. Goode demurs, Sanders proposes to examine him as to what took place at this interview.

"I cannot doubt, that Mr. Goode is bound to answer this interrogatory. In the course of a transaction in question, in the cause the plaintiff employs his solicitor as his agent, to com-

municate with the opposite party. I do not see how this can be regarded as a confidential or privileged communication; and I consider, that the defendant must be at liberty to give the communication in evidence, and to examine the solicitor as a witness to prove what it really was. Suppose the communication had been made by letter, it is every day practice to order parties to produce letters or copies of letters passing between their solicitors and the opposite parties or their solicitors.

"The demurrer must be overruled." *Gore v. Bowser*, 5 De G. & S. 30.

NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

COUNTY COURTS' FURTHER EXTENSION.¹

15 & 16 VICT. c. 54.

Lord Chancellor to appoint five Judges of Courts held under 9 & 10 Vict. c. 95, to frame a scale of fees, to be submitted to Judges of Superior Courts for approval. Costs to be taxed by clerk of Court, subject to review; s. 1.

So much of 13 & 14 Vict. c. 61, s. 14, as limits the Sitting of Court of Appeal to a time out of Term repealed. Appeals to be heard in Term as well as out of Term; s. 2.

Power to Judges of Superior Courts to make orders regulating appeals; s. 3.

Power to the Court or a Judge at Chambers to make an order entitling the plaintiff to recover his costs; s. 4.

Re-issuing warrants of distraint; s. 5.

Protection to officers; s. 6.

On petition to her Majesty, the jurisdiction of Court of local jurisdiction may be excluded from that of the County Court in concurrent causes; s. 7.

As to audit of clerk's account; s. 8.

Account of fees to be delivered; s. 9.

Provision of 9 & 10 Vict. c. 95, as to persons qualified to practise before County Courts *not to extend to this Act*; s. 10.²

Hundred Courts of Offlow and Hemlingford abolished; s. 11.

Compensation to officers of Hundred Courts; s. 12.

Compensations to be paid out of Consolidated Fund; s. 13.

Limiting salaries of Judges and clerks; s. 14.

Lord Chancellor may order retiring pension to be paid to County Court Judges; s. 15.

¹ This title should be "County Court Proceedings Act." The printed Act is incorrect.

² This marginal abstract in the printed Act is incorrect. See p. 191, *ante*.

Judges of County Courts not to practise at the Bar or as special pleaders after three months; s. 16.

No clerk to be appointed for more than one district, except in certain cases; s. 17.

A registry of County Courts' judgments to be established; s. 18.

No other persons to be appointed clerks of the Bristol Court until all the present clerks shall die, resign, or be removed; s. 19.

The following are the sections of the Act:—

An Act further to facilitate and arrange Proceedings in the County Courts.

[30th June, 1852.]

Whereas it is expedient further to facilitate and arrange proceedings in the County Courts: Be it enacted as follows:—

1. That it shall be lawful for the Lord Chancellor from time to time to appoint five of the Judges of the Courts holden under an Act of the 9 & 10 Vict. c. 95, intituled An Act for the more easy Recovery of Small Debts and Demands in England, from time to time to frame a scale of costs and charges to be paid to attorneys in the County Courts, to be allowed as between attorney and client and as between party and party; and such scale of costs and charges as shall be certified to the Lord Chancellor under the hands of the Judges so appointed or authorised, or any three of them, shall be submitted by the Lord Chancellor to three or more of the Judges of the Superior Courts of Common Law at Westminster, of whom the Chief Justice of the Court of Queen's Bench or Common Pleas, or the Chief Baron of the Court of Exchequer, shall be one, and such Judges of the Superior Courts may approve or disallow or alter or amend such scale of costs and charges, and the scale of costs and charges so approved, altered, or amended shall, from and after a day to be named by such last-mentioned Judges, be in force in every County Court; and all costs between party and party and attorney and client shall be taxed by the clerk of the Court; but his taxation may be reviewed by the Judge upon the application of either party; and in no case, upon the taxation of the costs between attorney and client, shall any charges be allowed, not sanctioned by the aforesaid scale, unless the clerk is satisfied by writing under the hand of the client that he has agreed to pay such further charges, and no attorney shall have a right to recover at law from his client any costs or charges not so allowed on taxation; and the Judges of the County Courts so appointed shall possess the same powers of making rules for regulating the practice of the Courts, and of settling doubts on the construction of any Acts relating to County Courts, as were conferred on the Judges to be appointed by the Lord Chancellor

for that purpose by the 12th section of the 12 & 13 Vict. c. 101, unless otherwise specially provided.

2. So much of the 13 & 14 Vict. c. 61, sect. 14, as limits the Court of Appeal to the Puisne Judges of the Superior Courts of Common Law at Westminster, and the sitting of the said Court of Appeal to a time out of Term, is hereby repealed; and all appeals now depending or hereafter to be brought before the said Superior Courts shall be heard and determined in Term by the Judges thereof, as part of the ordinary business of such Courts, or out of Term by any two or more of the Judges of the said Superior Courts sitting as a Court of Appeal for that purpose.

3. The Judges of the said Superior Courts, or any five of them, of whom a chief of one of the said Superior Courts shall be one, may from time to time make general orders for regulating the proceedings on appeals, which orders shall be as valid as if included in this Act, but shall not be in force until the end of the Session of Parliament next after the promulgation thereof.

4. The 13th section of the 13 & 14 Vict. c. 61, is hereby repealed; and in any action in which the plaintiff shall not be entitled to recover his costs by reason of the provisions of the 11th section of such Act, whether there be a verdict in such action or not, if the plaintiff shall make it appear to the satisfaction of the Court in which in such action was brought, or to the satisfaction of a Judge at Chambers, upon summons, that such action was brought for a cause in which concurrent jurisdiction is given to the Superior Courts by the 128th section of the 9 & 10 Vict. c. 95, or for which no plaint could have been entered in any such County Courts, or that such action was removed from a County Court by certiorari, or that there was sufficient reason for bringing such action in the Court in which such action was brought, then and in any of such cases the Court in which such action is brought, or the said Judge at Chambers, shall thereupon, by rule or order, direct that the plaintiff shall recover his costs, and thereupon the plaintiff shall have the same judgment to recover his costs that he would have had if the before-mentioned Act of the 13 & 14 Vict. c. 61, had not been passed.

5. That in all cases where a warrant of execution shall have been issued against the goods and chattels of any person, or an order for his commitment been made, and such person or his goods and chattels shall be out of the jurisdiction of the Court, and such warrant or order shall have been sealed and stamped by the clerk of another County Court, pursuant to the 104th section of the Act of the 9 & 10 Vict. c. 95, it shall be lawful for the said clerk of such other Court to re-issue the said warrant or order to the high bailiff of such other Court, and thereupon such high bailiff shall be authorised and required to act in all respects in the execution of the said warrant or order within the jurisdiction of the Court to which the same

shall have been so sent in the same manner, with the same powers, and subject to the same rules as if the district to which the warrant or order shall have been sent were within the limits of the Court which originally issued the warrant or order.

6. If any action or suit shall be brought against any person for anything done in pursuance of this Act, or of any other Act relating to County Courts, such person may plead the general issue, and give the special matter in evidence; and the warrant under the seal of the County Court, being produced in any such action or suit, shall be deemed sufficient proof of the authority of the said County Court previous to the issuing of such warrant; and in case the plaintiff in such action shall have a verdict ~~pass~~ against him, be nonsuit, or discontinue the action or suit, the defendant shall in any of the said cases be allowed full costs as between attorney and client.

7. If the council of any city or borough, or a majority of the ratepayers of any parish, within the limits of which a Court of local jurisdiction other than a County Court is established, under the said Act of the 9 & 10 Vict. c. 95, or into the limits of which the jurisdiction of such Court of local jurisdiction shall extend, shall petition the Queen in Council that the jurisdiction of such Court of local jurisdiction may be excluded in any causes whereof the County Court hath cognizance, and if notice of such petition shall be given two months before it is presented, by public advertisement in such city, borough, or parish, and in some newspaper therein circulated, her Majesty, by Order in Council, may declare such exclusion of the jurisdiction of such Court of local jurisdiction throughout the whole or any part of the district assigned or which may hereafter be assigned to such County Court, if no petition against declaring such exclusion be presented, and no caveat be entered at the Council Office; and if any counter petition be presented, or any caveat be entered, then her Majesty may refer such petition and counter petition to the Judicial Committee of the Privy Council, upon whose report her Majesty may make such Order in Council as she shall be advised touching the matter of the said petitions, in respect of excluding the jurisdiction of such Court of local jurisdiction, and may award compensation to any person or persons entitled to the franchise of appointing officers of such Court, or to any officers thereof appointed before the passing of this Act, to be given by the Commissioners of her Majesty's Treasury, who are hereby empowered to pay the same.

8. The treasurer of the County Court in which any insolvent's estate shall be administered, at the audits of the account of the clerk of such Court, shall also audit and examine the books and accounts of the clerk in all matters relating to such estate, and shall make a report to the Judge of the Court, stating whether a dividend should be made, and the general result of such audit; and the Judge

shall examine the said clerk on oath as to the correctness of such accounts, and may make such order as he may deem requisite respecting a dividend or other matter relating to such estate and accounts; and the treasurer shall thereafter at his future audit require and examine the receipts of the several creditors for any dividend; and the Commissioners of her Majesty's Treasury shall have power to make rules to be observed by the treasurers of County Courts respecting the audit of the clerk's accounts of insolvent estates, and shall have the same power of making rules for securing the balances and other sums of money in the hands of any officer of the County Courts under the last-mentioned Act, and for the due accounting and application of such balances and other sums, that they have with respect to balances and other sums in the same hands under the Act of the 9 & 10 Vict. c. 95.

9. The clerk and the high bailiff of every County Court shall deliver quarterly to the treasurer, in such form as the treasurer, by direction of the said Commissioners, shall require, a full account in writing of the fees from time to time received by them respectively under the Act of the 9 & 10 Vict. c. 95.

10. And whereas by the said Act 9 & 10 Vict. c. 95, it was enacted, that no person should be entitled to appear for any other party to any proceeding in any of the said Courts "unless he be an attorney of one of her Majesty's Superior Courts of Record, or a barrister-at-law, instructed by such attorney on behalf of the party, or, by leave of the Judge, any other person allowed by the Judge to appear instead of such party, but that no barrister, attorney, or other person, except by leave of the Judge, should be entitled to be heard to argue any question as counsel for any other person in any proceeding in any Court holden under that Act;" Be it enacted, That the said last-recited enactment be repealed; and that it shall be lawful for the party to the suit or other proceeding, or for an attorney of one of her Majesty's Superior Courts of Record, being an attorney acting generally in the action for such party, but not an attorney retained as an advocate by such first-mentioned attorney, or for a barrister retained by or on behalf of the party, on either side, but without any right of exclusive or pre-audience, or, by leave of the Judge, for any other person allowed by the Judge to appear instead of the party, to address the Court, but subject to such regulations as the Judge may from time to time prescribe for the orderly transaction of the business of the Court.

11. From and after the passing of this Act no action or suit shall be commenced in the Hundred Court of Offlow in the county of Stafford, or in the Hundred Court of Hemlingford in the county of Warwick, and the authority and jurisdiction of the said Courts shall cease, and all actions or suits depending in the said Courts shall be transferred, with all the proceedings thereon, to the County Court for the district in which the respective de-

fendants shall then reside; and such actions and suits shall be dealt with and decided, as to the costs of the same, as well as in other respects, according to the practice of the County Court or of the said Hundred Courts, according to the discretion of the Judge of the County Court, which Court shall for the purposes of such actions or suits be deemed to have all the power and jurisdiction possessed by the said Hundred Courts before the passing of this Act.

12. Every person who is legally entitled to any franchise or office in or in respect of the said Hundred Courts shall be entitled to make a claim for compensation to the Commissioners of her Majesty's Treasury within six months after the passing of this Act, and the said Commissioners, in such manner as they shall think fit, may inquire what was the nature of the franchise or office, and what was the tenure thereof, and what were the lawful fees and emoluments in respect of which such compensation should be allowed; and the said Commissioners in each case shall award such gross or yearly sum, and for such time, as they shall think just to be awarded, upon consideration of the special circumstances of each case: Provided always, that if any person holding any office in the said Hundred Courts shall be appointed to any public office or employment, the payment of the compensation awarded to him under this Act, so long as he shall continue to receive the salary or emoluments of such office or employment, shall be suspended, if the amount of such salary or emoluments be greater than the amount of the compensation, or, if not, shall be diminished by the amount of such salary or emoluments.

13. The several compensations hereinbefore granted shall be paid out of the Consolidated Fund of the United Kingdom of Great Britain and Ireland, and the Commissioners of her Majesty's Treasury of the said United Kingdom are hereby empowered to pay the same accordingly.

14. After the passing of this Act the greatest salaries to be received in any case by the Judges and clerks of the County Courts respectively shall be 1,800*l.* by a Judge, and 700*l.* by a clerk, but in no case shall any Judge be paid a less salary than 1,200*l.*: Provided always, that the salary of any Judge or clerk acting in the same capacity before the passing of the Act of the 9 & 10 Vict. c. 95, in any Court mentioned in Schedule (A.) to that Act, shall not be limited to any sum less than the average amount of the fees and emoluments of his office during the seven years next before the passing of the said last-mentioned Act.

15. That it shall be lawful for the Lord Chancellor, from time to time, on a petition presented to him for that purpose, to recommend to the Commissioners of her Majesty's Treasury that there shall be paid quarterly out of the said Consolidated Fund to such of the Judges of the County Courts as shall be afflicted with some permanent infirmity disabling him from the due execution of his office,

and who shall be desirous of resigning the same, an annuity or clear yearly sum of money for the term of his life, not exceeding two-thirds of the yearly salary which such Judge shall be entitled to as a Judge of County Court at the time of presenting his petition; and such annuity or sum shall be paid out of the said Consolidated Fund quarterly or otherwise, as the said Commissioners may direct.

16. After three months from the passing of this Act no Judge of the said County Courts shall practise at the bar, or as a special pleader or equity draftsman, or be directly or indirectly concerned as a conveyancer, notary public, solicitor, attorney, or proctor.

17. No clerk of a County Court shall henceforth be appointed for more than one district in which a Court is holden, unless from there being no attorney resident within the district of the Court in which the office of clerk is vacant, or from any other reason, the Lord Chancellor, or, where the whole of the district is within the Duchy of Lancaster, the Chancellor of the Duchy shall deem it expedient to order otherwise.

18. That a registry of every judgment entered in the County Courts for the sum of 10*l.* and upwards shall be formed in such manner, in such place, and under such regulations, as the Commissioners of her Majesty's Treasury shall appoint, and that for the inspection of the said register when formed such fees shall be charged to persons desirous of inspecting the same as shall be appointed by the said Commissioners, and the proceeds of such fees shall be applied in such manner as the said Commissioners shall appoint, in paying the expenses incurred in establishing and maintaining the said register, and the surplus of such fees, after providing for the payment of such expenses, shall be paid over to the credit of the Consolidated Fund of the United Kingdom of Great Britain and Ireland.

19. Upon the death, removal, or resignation of any of the persons now in possession of the office of Clerk of the County Court of Gloucestershire holden at Bristol, the remaining person or persons holding such office at the time of such death, removal, or resignation shall be the sole clerk or clerks of such Court, and no other person shall be appointed to such office of Clerk jointly or otherwise until all the persons holding such office at the time of the passing of this Act shall have died, resigned, or been removed.

LAWYER-CANDIDATES FOR PARLIAMENT.

THE Parliament, just dissolved, contained upwards of 70 Members connected with the Legal Profession. If a moiety of those now seeking for seats be successful, the proportion of professional men in the House of Commons will be considerably augmented.

The following Candidates who were in

the last, have been again nominated for the new Parliament :—

Anstey, Thomas Chisholm, *Bedford*.
 Aglionby, Henry Aglionby, *Cockermouth*.
 Adair, Hugh Edward, *Ipswich*.
 Armstrong, Rt. Baynes, Q. C., *Lancaster*.
 + Bethell, Richard, Q. C., *Aylesbury*.
 + Bremridge, Richard, *Barnstable*.
 Bunbury, Edwd. Herbert, *Bury St. Edmunds*.
 Benbow, John, *Dudley*.
 Brockman, Edward Drake, *Hythe*.
 Best, John, *Kidderminster*.
 Bourverie, Hon. Edward Pleydell, *Kilmar-
 nock (District)*.
 Butler, Pierce Somerset, *Kilkenny (County)*.
 Baines, Rt. Hon. Matthew Talbot, Q. C.,
Leeds.
 Barrow, Wm. Hodgson, *Nottinghamshire (S)*.
 Bernal, Ralph, *Rochester*.
 Baldwin, Charles Barry, *Totness*.
 Coles, Henry Beaumont, *Andover*.
 Cabbell, Benjamin Bond, *Boston*.
 Cobbold, John Chevallier, *Ipswich*.
 Collins, Thomas, *Knaresborough*.
 + Crowder, Richard Budden, Q. C., *Lisheard*.
 Cardwell, Edward, *Liverpool*.
 + Cockburn, Sir Alexander James Edmund,
 Q. C., *Southampton*.
 Ewart, William, *Dumfries (District)*.
 Evans, John, Q. C., *Haverfordwest*.
 ——— *Pembroke (District)*.
 Farrer, James, *Durham (South)*.
 Freshfield, J. W., *Penryn and Falmouth*.
 Grogan, Edward, *Dublin (City)*.
 Granger, Thos. Colpitts, Q. C., *Durham (City)*.
 Greene, Thomas, *Lancaster*.
 Gratian, Henry, *Meath (County)*.
 Grey, Rt. Hon. Sir Geo., Bart., *Northum-
 berland (N)*.
 Hodgson, William Nicholson, *Carlisle*.
 Hardcastle, Joseph Alfred, *Colchester*.
 Hogg, Sir James Weir, Bart., *Honiton*.
 Hobhouse, Thos. Benjamin, *Lincoln (City)*.
 Headlam, Thomas Emerson, *Newcastle-upon-
 Tyne*.
 Hayter, Right Hon. Wm. Goodenough,
 Q. C., *Wells*.
 Hildyard, Robert Charles, Q. C., *Whitehaven*.
 Inglis, Sir Robert Harry, Bart., *Oxford
 (University)*.
 + Kelly, Sir Fitzroy, *Suffolk (East)*.
 Lefevre, Right Hon. Charles Shaw, *Hants
 (North)*.
 Lewis, George Cornewall, *Herefordshire*.
 Loch, James, *Wick (District)*.
 Mullings, Joseph Randolph, *Cirencester*.
 Murphy, Francis Slade, S. L., *Cork (City)*.
 Moncreiff, Rt. Hon. James, *Leith (District)*.
 Nicholl, Right Hon. John, D.C.L., *Cardiff
 (District)*.
 Neeld, Joseph, *Chippenham*.
 O'Connell, Morgan John, *Kerry*.
 O'Brien, John, S. L., *Limerick (City)*.
 O'Connell, Maurice, *Tralee*.
 Peel, Frederick, *Bury*.
 + Palmer, Roundell, Q. C., *Plymouth*.
 Romilly, Right Hon. Sir John, *Devonport*.

Roebeck, John Arthur, Q. C., *Sheffield*.
 Stuart, John, Q. C., *Bury St. Edmunds*.
 Sadleir, John, *Carlou (Borough)*.
 Stanford, John Frederick, *Reading*.
 Scully, Francis, *Tipperary (County)*.
 Tancred, Henry William, Q. C., *Banbury*.
 + Thesiger, Sir Frederick, *Stamford*.
 Trelawny, John Salusbury, *Taunton*.
 Vivian, John Ennis, *Truro*.
 Wortley, Rt. Hon. James Archibald Stuart,
 Q. C., *Devonshire*.
 Wigram, Loftus Tottenham, Q. C., *Cambridge
 (University)*.
 Whiteside, Rt. Hon. Jas., Q. C., *Enniskillen*.
 Walpole, Rt. Hon. Spencer Horatio, Q. C.,
Midhurst.
 + Watson, William Henry, Q. C., *Newcastle-
 upon-Tyne*.
 + Wood, Sir William Page, *Oxford (City)*.
 Waddington, Harry Spencer, *Suffolk (West)*.

The following is a list of gentlemen, as far as we have been able to collect, not in the last Parliament, but who are now candidates for parliamentary honours :—

+ Atherton, William, Q. C., *Durham (City)*.
 Allen, Robert, S. L., *Stafford (Borough)*.
 Bosanquet, S. R., *Hertfordshire*.
 Barnes, P. Edward, *Penryn and Falmouth*.
 Bovill, William, *Lewes*.
 Butt, George Medd, Q. C., *Weymouth*.
 + Channell, W. F., S. L., *Beverley*.
 Cadogan, Hon. F., *Bridgnorth*.
 + Chambers, Montagu, Q. C., *Greenwich*.
 Chambers, Thomas, *Hertford (Borough)*.
 Cobbett, J. P., *Oldham*.
 + Collier, Robert P., *Plymouth*.
 Cleasby, A., *Surrey (East)*.
 Cox, Edward William, *Teakessbury*.
 Escott, B., *Plymouth*.
 Evans, Cooke, *Stafford (Borough)*.
 Follett, B. Spencer, Q. C., *Bridgewater*.
 Follett, Robert B., *Lichfield*.
 Fenwick, Henry, *Sunderland*.
 Farsyde, G. J. W., *Whitby*.
 Gipps, H. P., *Canterbury*.
 Gaselee, S., S. L., *Portsmouth*.
 Gower, Hon. F. Leveson, *Stoke-on-Trent*.
 Greene, J. G. J., *Wilton*.
 Huddleston, J. W., *Worcester (City)*.
 Ingham, R., Q. C., *South Shields*.
 Kinglake, A. W., *Bridgewater*.
 + Keating, H. S., Q. C., *Reading*.
 Kinderley, George Herbert, *Tralee*.
 + Kinglake, J. A., S. L., *Wells*.
 Layard, Henry Austen, D.C.L., *Aylesbury*.
 Liddell, Hon. A. F. O., *Gateshead*.
 Locke, J., junior, *Hastings*.
 Lowe, Robert, *Kidderminster*.
 Lewis, William David, *Pontefract*.
 Macaulay, James, *Cambridge (Borough)*.
 Macaulay, Rt. Hon. T. B., *Edinburgh (City)*.
 Massey, W. N., *Newport*.
 Mills, Arthur, *Taunton*.
 Malins, Richard, Q. C., *Wallingford*.
 + Mellor, J., Q. C., *Warwick (Borough)*.
 Newton, Augustus, *Ripon*.

Overend, W., Sheffield.

+ Phinn, Thomas, *Bath.*

Phillimore, J. G., Q. C., *Cheltenham.*
Leominster.

Palmer, Geoffrey, Leicester.

Pashley, Robert, Q. C., Lyme Regis.

Pugh, David, Montgomery (District).

Phillimore, Robt. Joseph, D.C.L., Tavistock.

†Rolt, John, Q. C., *Bridport.*

Romaine, W. G. (*Marlow Great*).

Ridley, George, Northumberland (South).

Robinson, Augustin, (Shrewsbury).

Stapleton, John, Berwick.

Smith, John Sidney, Bodmin.

† Slade, F. W., Q. C., *Dorchester.*
 ————— *Salisbury.*

+Shoe, William, S. L., Kilkenny (County).

Sturgeon, C., Nottingham (Borough).

Seymour, William Digby, Sunderland.

+Whateley, William, Q. C., Bath.

Wilkins, Charles, S. L., *Evesham.*

Wire, David Williams, Greenwich.

+Wilde, James, Leicester.

NOTES OF THE WEEK.

LAW PROMOTIONS.

THE Lord Chancellor has appointed Mr. Brodie, Mr. Christie, Mr. Coote, Mr. Hayes, Mr. Jerman, and Mr. Lewin, as the Conveyancing Counsel, to whom references will be made by the Judges, under the Masters in Chancery Abolition Act.

SHERIFF OF ANGLESEY.

Her Majesty in Council, was this day (1st July) pleased to appoint *Rice Roberts*, of Tal-y-Llyn, Esq., to be Sheriff of the County of Anglesey in the room of *Evan Lloyd*, of Maes-y-Port, Esq., deceased.—From the *London Gazette* of July 2.

READERSHIP AT GRAY'S INN.

Mr. Reginald R. Walpole has been appointed Reader on the Law of Real Property under the recent order of the Council of the Four Inns.

RECENT DECISIONS IN THE SUPERIOR COURTS

AND SHORT NOTES OF CASES.

Lord Chancellor.

Chard v. Chard. May 4, 1852.

**SOLICITORS.—PURCHASE OF PROSECUTION
OF SUIT.—COSTS.**

Solicitors purchased of L., the solicitor on the record, the prosecution of a suit, in Feb. 1843, and acted therein, but no change was made on the record until Dec. 1844. It appeared L. acted under an agreement with a defendant, which provided for her making certain payments from time to time, and that L. was to return any overpayment, if his bills on taxation should be less than the payments on account.: Held, allowing an appeal from Vice-Chancellor Knight Bruce, without costs, that the solicitors were entitled to the costs of suit from Feb. 1843, and were liable to repay to the defendant, under the agreement, any excess in the payments to L., previous to the order of Dec. 1844.

*The sale of the prosecution of a suit disap-
proved of and censured.*

By an agreement between Mr. Lord, a solicitor, and Mrs. Chard, one of the defendants in this suit, certain terms were arranged, on which he was to conduct the suit, and she agreed from time to time to make him payments on account, to be repaid if they exceeded the amount of his taxed costs. In February, 1843, he sold for 50*l*. the prosecution of the suit to Messrs. Blake and Tamplin, and they continued to conduct it without any change of solicitors on the record until Dec. 1844.

The question arose, whether Messrs. Blake and Tamplin were entitled to their costs in the suit from Feb. 1843, or only from Dec. 1844, when their names were placed on the record, and also, whether, if they were entitled to the

whole costs, they were bound to return to Mrs. Chard any payments made by her to Mr. Lord since Feb. 1843, in excess of the taxed costs.

Bacon and Wilcock for the appellants; *Rolt and Bichner*, contra.

The Lord Chancellor said, that the appellants became the absolute purchasers from February, 1843, and were entitled to receive the costs of the suit, and were clearly placed in the same situation as Mr. Lord originally was, and must be presumed to have purchased with full knowledge of the agreement between him and Mrs. Chard. Although, therefore, the transaction of trafficking in the costs of a suit was wrong and deserving of the censure of the Court, the appellants were entitled to the costs of the suit, but they were liable to repay any sums paid by Mrs. Chard to Mr. Lord previous to the order in December, 1844, changing the solicitors on the record. The appeal would therefore be allowed, but without costs.

Hards Justice.

*In re Newark, Boston and Sheffield Railway
Company, ex parte Williams. July, 6, 1852.*

WINDING-UP ACT.—PRELIMINARY INQUIRY.

—PRODUCTION BY DIRECTORS OF BOOKS.

—PRACTICE.

Held, dismissing an application for a reference back to the Master without costs, that the Master has not jurisdiction on a reference as to the expediency of winding up a company, under sec. 12 of the 11 & 12 Vict. c. 45, to order a director to attend with books, &c., to enable the petitioner for the order to ascertain whether certain sums had been duly accounted for, but that his course is to proceed under s. 63, and obtain a summons from the Master for such production.

THIS was an application for a reference back to the Master to review his certificate, on a reference to inquire and certify whether this was a fit case to make a final order for the winding up of the above company, under the 11 & 12 Vict. c. 45, s. 12. The Master had reported against the expediency of making an order to wind up the affairs.

Roxburgh in support, on the ground that an application for an order on the directors to attend with their books and papers, to enable the petitioners to ascertain whether they had duly accounted for certain sums, had been refused by the Master.

Selwyn, W. T. S. Daniel, and Glasse, contra.

The *Lords Justices* said, that the Master had not jurisdiction upon a mere order for a preliminary inquiry to make the order contended for, but that it was necessary to proceed under s. 63, and obtain a summons on any director to attend with the books, and as the petitioner had not thus proceeded, he had lost the opportunity of inspection, and the application must be refused without costs.

June 30.—*Ex parte Dufaur, in re Dufaur*—Stand over.

July 1.—*Glasse v. Richardson*—Cur. ad. vult.

—*Moorhouse v. Colvin*—Appeal from the Master of the Rolls dismissed.

—3.—*Tallis v. Tallis*—Order of Vice-Chancellor Turner discharged.

—3, 5.—*Walker v. Bentley*—Appeal dismissed with costs from Vice-Chancellor Turner.

—5.—*Horlock v. Horlock*—On appeal from the Master of the Rolls claim dismissed.

—6.—*In re Midland Railway Company, ex parte Fenton*—Order for removal of name from list of contributories—costs to come out of the estate.

—6.—*In re Eastern Counties' Junction and Southend Railway Company, ex parte Edwards*—The like order.

Rolls Court.

Ayles v. Cox, May 3, 1852.

SALE UNDER DECREE.—MISDESCRIPTION OF PROPERTY AS COPYHOLD INSTEAD OF LEASEHOLD.—CONDITIONS OF SALE.

On the sale of certain property under a de-

¹ Which provides, that "it shall be lawful for the Master, as well before as after the order absolute, to summon before him any person, whether a contributory of such company or not, who shall be or shall be deemed to be capable of giving information concerning such company, or the estate, dealings, or affairs thereof, and also, to require such person so summoned to produce, and if a contributory, to leave with the Master or the official manager, any books, papers, deeds, writings, or other documents in the custody, possession, or power of such person, which may appear to the Master to be necessary or expedient to be produced or left as aforesaid."

oree it was described as copyhold, whereas on the reference to the Master and the title being investigated it proved to be freehold. There was a condition of sale providing that if any mistake or error was made or discovered in the description of the premises, or any other error whatsoever, such mistake or error should not annul the sale, but a compensation or equivalent should be given or taken as the case should require. Exceptions to the Master's report, finding a good title had not been made out, were overruled.

By the conditions of sale under a decree, certain property consisting of a cottage with garden and land attached, was represented to be copyhold and it was also provided that if any mistake or error was made or discovered in the description of the premises, or any other error whatsoever, such mistake or error should not annul the sale, but a compensation or equivalent should be given or taken as the case should require, such compensation to be settled by the Master. It appeared upon the investigation of the title before the Master that the property was freehold, and upon the vendors claiming compensation for the increased value, the purchaser refused to carry out the contract. The Master thereupon reported a good title had not been made out, to which exceptions were taken.

R. Palmer and Walker in support; *Grimeside, contra.*

The Master of the Rolls said, the exceptions must be overruled.

June 30.—*In re London Dock Company, ex parte Hyde*—Stand over.

—30.—*Rawlings v. Abraham*—Judgment on special case.

July 1.—*Heaton v. Deardon*—Decree for specific performance of contract.

—1.—*In re Colchester Free Grammar School*—Stand over.

Vice-Chancellor Turner.

June 30.—*Robinson v. Governors of London Hospital*—Judgment as to bequests to charity, and Cur. ad. vult. as to whether Mortmain Act applied.

July 3.—*Kennerley v. Kennerley*—Judgment on construction of will, and as to validity of appointment under power.

—5.—*Devey v. Devey*—Bill dismissed to set aside conveyance.

—5.—*In re Duke of Buckingham's Estate Act*—New trustee approved of.

Vice-Chancellor Kindersley.

In re Waring and Tellwright's Trust, May 29, 1852.

MARRIAGE SETTLEMENT.—TRUSTEES' RELIEF ACT.—JURISDICTION ON PETITION WHERE BILL FILED.

A settlement was executed upon the marriage of a minor of a fund she was entitled to

under the will of a testator to her separate use for life, with remainder to her children, and there was a proviso that the settlement should not be valid unless she ratified it when she attained her majority. Notice was given to the trustees on her attaining that age of her intention to impeach the settlement in Equity, and on the suit being instituted for that and for other purposes the trustees paid the fund into Court under the 10 & 11 Vict. c. 96: Held, that the Court had jurisdiction under the act, notwithstanding the suit, to make an order for payment of the fund out of Court, but under the circumstances the petition was directed to stand over until the hearing of the suit.

THE petitioner, Mrs. Waring, was entitled, under the will of a Mr. Tellwright, to a sum of 1,100*l.*, and had upon her marriage while a minor executed a settlement whereby it was settled to her separate use for life, with remainder to her children, and it was provided that the settlement should be void if she should not ratify it when she attained 21. She refused to adopt the settlement on her attaining 21, and claimed the fund, and she also gave the trustees notice of her intention to impeach the settlement in Equity, and on the bill being filed for that and for other purposes relating to the will, they paid the money into Court under the 10 & 11 Vict. c. 96. This petition was now presented for payment out of the fund.

Lewis in support; *Stuart and Hadden*, for the trustees, contra.

The Vice-Chancellor said, that although there was no doubt the Court had jurisdiction to decide the matter on the present petition, and the executors could not object, after having paid the money into Court under the 10 & 11 Vict. c. 96, to its being dealt with under that act, yet as a bill had been actually filed for the same purpose, it must stand over until the cause came on for hearing.

Thomas v. Knight. July 3, 1852.

CLAIM.—DEMURRER ORE TENUS.—CONTRACT FOR LEASE FOR A YEAR.—SPECIFIC PERFORMANCE.

On demurrer ore tenus, a claim for the specific performance of a contract for a lease for a year was dismissed with costs.

THIS was a demurrer ore tenus to a claim to enforce the specific performance of a contract for a lease for year of certain livery stables in Theobald's Road, Gray's Inn Lane.

Selwyn in support, on the ground the specific performance of a contract for a lease for a year could not be enforced.

Bagshawe for the plaintiff.

The Vice-Chancellor dismissed the claim with costs.

June 30.—*Groves v. Land*—Leave to amend claim, on payment of extra costs.

— 30; July 1—*Van Zeller v. Parrott*—Decree for plaintiff, with costs.

July 2.—*Hawkins v. Gathercole*—Motion refused to commit for contempt, but on payment of costs.

— 2.—*In re Whittaker's Trust*—Order for payment out of Court under Trustees' Relief Act.

— 3.—*Wanwick v. Clausen*—Injunction granted.

— 3.—*Thomas v. Knight*—Claim dismissed, with costs.

— 5.—*Mejor v. Mejor*—Judgment on exceptions to Master's report.

— 6.—*Greenwood v. Taylor*—Reference back to the Master to review report.

— 6.—*Duke of Marlboro' v. Berry*—Order for defendant's committal for breach of injunction.

Vice-Chancellor Parker.

In re Sea, Fire, and Life Assurance Company, ex parte Burton. June 3. 1852.

WINDING-UP ACT.—CONTRIBUTORY.—REVO-
CATION OF POWER OF ATTORNEY TO SIGN
DEED OF SETTLEMENT.

B. was appointed by the managing director of a company one of their local agents, and he agreed to take five shares and executed a power of attorney authorising the director to execute the deed of settlement in respect of not more than five shares. He afterwards wrote, upon receiving an intimation that five shares had been allotted to him, and requesting the payment of 5*l.* deposit, desiring to terminate his connexion with the company. In reply, his resignation as agent was accepted, but the 5*l.* was still pressed for, and B. again wrote, requesting to be exonerated from the shares as well as the agency, and he received an answer that the directors could not release him as a shareholder, but that they would allow him to nominate another person to pay on the shares. B. took no further steps in the matter, and his name was signed under the power to the deed: Held, affirming the Master's decision, that he was liable as a contributory.

THIS was an appeal from the Master's decision, inserting the name of Mr. Burton on the list of contributories to the above company. It appeared that upon the managing director appointing the appellant, who was an auctioneer, a local agent to the company, he had agreed to take five shares therein, and to execute a power of attorney authorising such managing director to execute on his behalf the deed of settlement in respect of not more than five shares. Five shares were allotted to the appellant, and application was made for 5*l.* amount of deposit; but he wrote to the managing director, requesting to terminate his connection with the company. In reply to this letter the resignation as agent was accepted, but the 5*l.* was pressed for, whereupon the appellant wrote expressing his desire to be exonerated in respect of the shares as well as

the agency; but he was informed the directors could not release him from being a shareholder, but that he might nominate another person to pay the amount due on the shares. The appellant never answered this note nor paid the sum applied for, and the managing director afterwards executed the deed under the power for five shares. The company was completely registered, and the appellant's name appeared on the register in respect of five shares.

Malins in support; *Roxburgh* for the official manager, *contra*.

The *Vice Chancellor* said, that as the correspondence did not in fact amount to a revocation, the appeal must be dismissed.

July 1, 2.—*Earl of Stamford v. London and North Western Railway Company and others*—Injunction granted to restrain diversion of turnpike road.

—2.—*Clay v. Rufford*—Bill for specific performance of contract dismissed without costs, and cross bill with costs.

—2.—*Waite v. Coombes*—Judgment on claim as to construction of will.

—5.—*Harrison v. Brown and others*—*Cur. ad. vult.*

—6.—*In re Direct Exeter, Plymouth, and Devonport Railway Company, ex parte Hall*—Order as to costs.

Court of Queen's Bench.

Regina v. Judge of Wiltshire County Court.

June 11, 1852.

COUNTY COURTS' ACT.—CARRIAGE BY CANAL.—CAUSE OF ACTION.—JURISDICTION.—PROHIBITION.

A plaintiff to recover for carrying to London by canal timber from Swindon was entered in the County Court, in which district the latter place was situate: Held, making absolute a rule for a prohibition against further proceeding with the plaintiff, that the cause of action under the 9 & 10 Vict. c. 95, s. 60, did not arise until the timber was delivered in London.

THIS was a rule nisi for a prohibition on the Judge of the Wiltshire County Court against further proceedings in the plaint of *Barnes v. Marshall*, which was entered to recover for carrying by canal certain timber to London from Swindon, which was within the jurisdiction.

By the 9 & 10 Vict. c. 95, s. 60, it is enacted that "such summons may issue in any district in which the defendant, or one of the defendants, shall dwell or carry on his business at the time of the action brought; or, by leave of the Court for the district in which the defendant or one of the defendants shall have dwelt or carried on his business at some time within six calendar months next before the time of the action brought, or in which the cause of action arose, such summons may issue in either of such last-mentioned Courts."

Hodges showed cause against the rule, which was supported by *Bovill*.

The Court said that the cause of action was not complete until the goods had been carried to London, and the rule for a prohibition was accordingly made absolute.

Court of Common Pleas.

Wadsworth v. Weaver. May 26, 1852.

METROPOLIS BUILDINGS ACT.—PARTY-WALL.—ACTION OF TRESPASS AGAINST ADJOINING OWNER.

Held, that the owner of a house cannot maintain an action of trespass against an owner of an adjoining house, for building up against a party wall which he had erected, but that he must proceed in accordance with the provisions of the 7 & 8 Vict. c. 84, to recover the expense, &c., of building such party wall.

THIS was a motion to set aside the verdict for the defendant, and for a new trial. The action was in trespass to recover damages for the defendant's having built up to the party wall between his and the plaintiff's house, and which the latter had erected. By s. 46 of the 7 & 8 Vict. c. 84, it is enacted, that "if the party structure be built in the manner, and of the materials, and of the thickness of such structure as required by this Act in reference thereto, then it shall be lawful for the building owner, at whose expense such work shall have been executed, to claim, and he is hereby entitled to be paid, and to recover from the person who is entitled to the immediate possession of the adjoining building or ground, or who is in the immediate occupation thereof," certain compensation as specified.

And by s. 47, it is enacted, "with regard to the costs of all the works which shall be executed under this Act, incurred either by an owner or by an occupier, either on behalf of the owners of the same premises or on behalf of the owner of the adjoining premises, so far as relates to the recovery thereof, that within 21 days after the completion of the work, it shall be the duty of the person by whom such expenses shall have been incurred, to deliver to the adjoining owner of the building or premises in respect of which such expenses shall have been incurred, an account in writing of the expenses of the work," &c., "and that if, within 10 days after the delivering of such account to the party liable to pay the same, such party do not either appeal against such account or pay the same," &c., "it shall be lawful for the person entitled thereto to recover the same, or so much thereof as shall be then due, by the summary proceedings," provided by sections 48, 49. The jury having returned a verdict for the defendant,

Pearson moved for this rule, and urged the action was maintainable.

The Court, however, refused the rule, and held, that the plaintiff's remedy was under the provisions of the 7 & 8 Vict. c. 84.

Court of Exchequer.

Benham v. United Guarantee and Life Assurance Company. June 7, 1852.

ACTION ON GUARANTEE.—REGULAR EXAMINATION OF ACCOUNTS.—WARRANTY.

On the proposal of a guarantee from the defendants for the honesty of the secretary of a literary institution, certain questions were put, one of which was, as to when and how often the accounts would be examined and closed, and in answer to which it was stated once a fortnight. These questions and answers were introduced into the guarantee, and it appeared the accounts were suffered to be in arrear: Held, that the answers to the questions only indicated the course intended to be pursued, and as they were not stated by the guarantee to be a direct warranty whose observance was to be a condition to the validity of the guarantee, the plaintiff was entitled to recover on the guarantee upon their appearing to have been made bona fide; and a demurrer to the defendants' plea, setting up the negligence in not regularly auditing the accounts as a defence, was allowed.

THIS was a demurrer to the plea in this action which was brought on a guarantee granted by the defendants for the honesty of

the secretary of the Marylebone Literary Institution. It appeared that when the guarantee was proposed a question was put as to when and how often the accounts of the secretary would be examined and closed, and that it had been stated in reply thereto that the finance committee would examine the accounts every fortnight, and the guarantee contained a recital of such questions, and that they formed the basis of the contract. The plea set out these facts, and alleged that the loss was occasioned by the neglect and default of the institution, inasmuch as the accounts were not regularly examined, and the secretary allowed to become in arrear.

Bovill appeared in support of a demurrer to this plea; *Lush* for the defendants, *contrà*, on the ground that the premiums were reduced, as the risk was less if the accounts were examined every fortnight, as recited in the guarantee.

The Court said the answers to the questions only indicated the probable course to be adopted by the institution, and there was no statement in the guarantee that they were meant to be treated as a direct warranty whose observance was to be a condition to the validity of the guarantee, and as the answers had been made *bona fide*, the plaintiff was entitled to recover, and the demurrer would be allowed.

ANALYTICAL DIGEST OF CASES,

REPORTED IN ALL THE COURTS.

Courts of Equity.

[For the previous Sections of the Digest in this Volume, see

Privy Council: Appeals, p. 17.

House of Lords: Appeals, p. 38.

Courts of Equity:

Construction of Statutes, p. 104.

Law of Attorneys and Solicitors, p. 125.

Contributories under the Winding-up Act, p. 143.

Law of Trustees, p. 165.

Lunacy, p. 185.

Law relating to Infants, p. 186.]

LAW RELATING TO CHARITIES.

CONSTRUCTION OF BEQUEST.

1. *Increased rent*.—Devise to a corporation "upon condition" of making certain stated payments to a school and other charitable objects, and the "overplus," which the testator estimated at about 60*l.* a year, should go, half to the mayor and half towards repairing highways: *Held*, upon the context, that the increased rents were divisible amongst all the charitable objects in proportion. *Attorney-General v. Corporation of South Molton*, 14 Beav. 357.

Case cited in the judgment: *Attorney-General v. Drapers' Company*, 4 Beav. 67.

2. *Execution of power*.—A power well exercised in other respects will, in favour of charities, be deemed to be an effective execution of the power, although the form in which the power has been exercised has not conformed to the requisitions imposed by the instrument creating or giving the power. *Innes v. Sayer*, 3 M'N. & G. 606.

3. *Discretion of trustees*.—Charitable gift to the use of the reparation of the church of U., and to the use of the reparation of the bridge of U., and to the use of other things needful within the parish of U., at the discretion of the trustees, to be applied and distributed for ever: *Held*, that the discretion applied to the third branch only, and that the three objects took equally. *In re Hall's Charity*, 14 Beav. 115.

4. *Evidence afforded by usage*.—*Scotch Kirk*.—A chapel in England was founded between the Restoration and the Revolution, without any deed or document declaring the purposes for which it was to be used, but it appeared that from the foundation the services had always been conducted in conformity with "the Directory," by which the mode of worship in the Church of Scotland is regulated.

Held, that the chapel must be treated as appropriated to the purposes of religious worship according to that Directory, and, therefore, according to the Presbyterian form.

A minister of such a chapel had been ordained by a Scotch Presbytery. He afterwards became a member of a Synod assembled in England, which adhered to certain resolutions respecting Church patronage in Scotland. Subsequently, a general assembly of the Church of Scotland enacted, that all members of that Synod who so adhered were no longer members of, or in communion with, the Church of Scotland: *Held*, that the minister was thereby deprived of his status of an ordained minister of the Scotch, or of any Presbyterian Church, and became disqualified from acting as the minister of the chapel, (independently of any question, whether it was necessary for him to be a Scotch minister or licentiate,) it being an essential part of the Presbyterian system that none but ordained ministers or licentiates should perform Divine Service.

Semble, per Lord Justice Knight Bruce, that with respect to a question of property it is competent for a congregation of Dissenters, acting unanimously and with the concurrence (where they have trustees) of their trustees, to introduce effectually into their system and constitute new regulations, not in contravention of any deed of trust, and not opposed in principle to the original constitution; and that it is competent for such a congregation in England to resolve effectually, though not irrevocably, that every future minister shall be a person in communion with the Established Church of Scotland.

The effect of usage as evidence of the trusts, on which a Dissenter's place of worship is held, varies greatly in different circumstances, and, the Court differing in opinion upon the evidence whether it was a necessary qualification for a minister of a particular chapel to be a minister or licentiate of the Church of Scotland, the decree of the Court below, declaring that qualification to be necessary, was affirmed, as well as other portions of the decree with which both members of the Court agreed. *Attorney-General v. Murdoch*; 1 De G., M & N. & G. 86.

Case cited in the judgment: *Attorney-General v. Pearson*, 3 Mer. 353.

5. *Trust for use of Protestant Dissenters belonging to particular minister.*—Distinction between a trust created for the use of Protestant Dissenters generally, and for the use of an existing congregation of Protestant Dissenters belonging to a particular minister: in the former case Presbyterians, Baptists, and Independents are included; in the latter, the terms of the trust open an inquiry into the particular character of the congregation which is the object of the trust. *Attorney-General v. Murdoch*, 7 Hare, 145.

Case cited in the judgment: *Lady Hawley's case*, 9 C. & F. 355; 11 Sim. 592.

6. *Congregation in connexion with Established Church of Scotland.—Qualification of minister.*—Where trusts of a meeting-house in England are created for the use of a congregation,

to be in as strict connexion as practicable with the Established Church of Scotland, no person is entitled to be a minister of the meeting-house whose opinions or acts constitute a disqualification for the ministry of that Church; and the fact that the meeting-house is locally situated beyond the jurisdiction of that Church is immaterial.

In determining the question, whether a particular minister was disqualified as a minister of the Established Church of Scotland, the Court considered whether the acts of such minister had brought him within the predicament which, according to the terms of a declaration of the General Assembly of that Church, constituted a dissolution of his connexion with it, without determining whether the sentence of a particular presbytery, depriving him of his licence, was or was not conclusive as a disqualification. *Attorney-General v. Murdoch*, 7 Hare, 445.

7. *Scotch Kirk.—Removal of minister.*—In 1832, by a trust deed, a Presbyterian Church and school in England were settled upon trustees, upon trust "for the worship and service of God, according to the rites and usages of the Established Church of Scotland," the services "to be conducted by a minister belonging to and in full communion with the same church." A minister eligible in these respects, having been a minister licensed by the presbytery of Edinburgh, was appointed to be and continued minister. In 1843, the Free Church seceded from the Established Church of Scotland upon certain differences in matters of discipline, but not of doctrine. The appointed minister adhered to the Free Church. He was cited before the Presbytery of Edinburgh, but declined to attend, and was by that body declared to be no longer a licentiate or minister of the Church of Scotland. Shortly afterwards, the General Assembly of the Church of Scotland in due form declared, that all the adherents of the Free Church ceased to be members of the Church of Scotland: *Held*, that, according to the provisions of the trust-deed, the minister was no longer competent to fill the office, and a decree was made for his removal, and directions were given for the future administration of the charity. *Attorney-General v. Munro*, 2 De G. & S. 122.

8. *Legacy.—Pure personality.*—A testator gave pecuniary legacies to charities, and directed them to be paid out of such of his ready money, goods, and personal effects, as he might, by law, charge with the payment of the same: *Held*, not sufficient to throw the debts, funeral and testamentary expenses, and debts and legacies not charitable, on the mixed personality, so as to leave the pure personality for the charitable legacies. *Robinson v. Goldard*, 3 De G. & S. 499.

Cases cited: *Philanthropic Society v. Kemp*, 4 Beav. 581; *Sturge v. Dinsdale*, 6 Beav. 462.

9. *Gift for encouraging good servants.*—Bequest to the governors of a society instituted

for the "increase and encouragement of good servants," &c. No such institution could be found: *Held*, that the gift was charitable, and did not fail. *Loscombe v. Wintringham*, 13 Beav. 87.

See *School*.

EXCHANGE OF CHARITY LANDS.

Conclusive effect of exchange under stat. 1 & 2 Geo. 4, c. 92.—The Commissioners appointed under the Stat. 1 & 2 Geo. 4, c. 92, and the bishop, having found that an exchange of the charity lands would be beneficial, and the same having been effected according to the statute, the Court has no power to reverse their decision; and it is immaterial that the bishop was himself one of the trustees of the charity, the bishop having no personal interest in the property. *Attorney-General v. Bishop of Worcester*, 9 Hare, 328.

Cases cited in the judgment: *Windsor v. Inhabitants of Farnham*, Cro. Car. 40; *Duke's Char. Uses*, 634; *Attorney-General v. Bovill*, 1 Phill. 769.

MORTMAIN.

1. *Erection of buildings.*—A charitable bequest to lay out money in the erection of buildings, without more, presupposes that a portion of the bequest must be applied in the purchase of land for that purpose; and is void under the Statute of Mortmain. *Trye v. Corporation of Gloucester*, 14 Beav. 173.

2. *Erection of buildings on lands already in mortmain.*—*Valid.*—A bequest to lay out money in the erection or repair of buildings upon lands already in mortmain is a valid and effectual bequest.

The rule is, as stated in *The Attorney-General v. Davies*, (9 Ves. 544,) "that, unless the testator distinctly points to some land already in mortmain, the Court will understand him to mean that an interest in land is to be purchased, and the gift is not good."

A bequest of money to be expended in the erection or repair of buildings is void, unless the testator expressly states in his will his intention that the money is to be expended on some land already in mortmain. *Trye v. Corporation of Gloucester*, 14 Beav. 173.

3. *Bequest, when void.*—A bequest is void which tends directly to bring fresh lands into mortmain. *Trye v. Corporation of Gloucester*, 14 Beav. 173.

4. *Land being given for the purpose of charity within 10 years.*—Bequest of money which, in the event of land being given for the purpose to the corporation of Gloucester, was to be laid out upon it for a charity, with a gift over, if no land were "granted and conveyed for that purpose within" 10 years after the testator's decease. Lands were conveyed a few days before the expiration of the 10 years, but the deed was not enrolled until five days after the expiration: *Held*, first, that although the enrolment and the 12 months (during which it was necessary the grantor should survive to give the grant validity) both took place after the 10 years; still that the grant must be con-

sidered valid as from its date: *Held*, secondly, that whether the grantor could afterwards defeat the voluntary grant or not by a conveyance to a purchaser for valuable consideration, did not affect the question: *Held*, thirdly, that the bequest was void. *Trye v. Corporation of Gloucester*, 14 Beav. 173.

5. *Scotch Kirk.*—A fund was raised by moneys contributed chiefly in small sums, to a large amount in the whole, for the purpose of purchasing land as a site for a Presbyterian church and school. With a part of these moneys, one of the subscribers, in December, 1838, purchased a freehold piece of land for that purpose, and took the conveyance to such uses as he should appoint. In May, 1839, he appointed the land to the use of trustees, upon trust for the establishment of a church and school accordingly. There was doubt whether, with respect to either of these deeds, the provisions of the Mortmain Act had been complied with. In a suit by information and bill, instituted by some of the trustees of the deed of May, 1839, against the remaining trustees, and the minister of the church and a mortgagee, who was also one of the original subscribers to the fund, complaining that the minister of the church had ceased to be qualified to act in that capacity, according to the trusts of the deed, and seeking to enforce the performance of those trusts: *Held*, first, that if the deeds were legally invalid for noncompliance with the provisions of the Mortmain Act, the trusts could not be enforced in equity. Secondly, that the plaintiff's declining to try the legal validity at law, the equities existing between the parties did not enable the Court to interfere.

Thirdly, that the suit was not defective for want of parties, on the ground that the original subscribers were not distinctly represented. *Attorney-General v. Gardner*, 2 De G. & S. 102.

6. *Scotch Kirk.*—*Parties.*—Moneys were subscribed, chiefly in small sums, by various persons, to a large amount in the whole, for the purpose of purchasing land and erecting thereon a Presbyterian church and school.

Lands were purchased with portions of the moneys subscribed, and were conveyed to three re-lessees in fee, by deeds not perfected according to the requisitions of the Mortmain Act, nor disclosing any charitable trust. The re-lessees, by a subsequent deed, conveyed the lands upon trust to be reconveyed to them and others; and by a fourth deed, all the lands were assured to the use of the first re-lessees and others, upon trusts for maintaining a place of worship and schools in connexion with the Established Church of Scotland, for the purposes of which they were held and used by the trustees. The last of these deeds only was perfected according to the provisions of the Mortmain Act. On an information and bill, the latter of which was filed by some of the trustees, and some of the *cestui que trustent* under the 4th deed, to enforce the performance of the trusts.

Held, first, that, whether the three former deeds were or were not void, some of the parties to the 4th deed, being at the time of its execution in the possession of the lands dedicated by that deed to charitable trusts, and the possession having subsequently been held according to that deed, none of the parties could be heard to dispute its validity.

Held, 2ndly, that this was irrespective of any infirmity of the grantor's title, and that the liability of the lands to be recovered by a title paramount was no objection to a suit seeking to enforce the trusts of the fourth deed.

Doubts being in 1844 entertained whether any one of the four deeds of 1832 were valid, some of the trustees claimed the land, under a title paramount, treating those deeds as invalid, and brought a friendly action of ejectment against the minister in possession, in which the question was fairly argued, and recovered judgment in such action; and the same trustees, and the minister, set up the title under the ejectment of 1844, as an adverse title in the suit, to enforce the trusts of the deeds of 1832. The Court ordered them, on this ground, to pay the costs of the suit to the hearing.

Some of the parties to the suit were original subscribers to the charity fund, but they were parties in other characters; no subscriber solely represented, or was made party to represent, the original subscribers as a class: *Held*, that the suit was not defective for want of parties. *Attorney-General v. Munro*, 2 De G. & S. 122.

7. *Railway Debenture*.—Shares in a joint-stock bank.—A debenture of the Newcastle and Carlisle Railway Company, *held* not to be within the Statute of Mortmain.

Shares in a joint-stock bank, the property of which consisted of freehold and copyhold estates and mortgages for terms of years, *held* to be within the Statute of Mortmain. *Myers v. Perigal*, 16 Sim. 533.

MUNICIPAL CORPORATIONS' ACT.

Property vested in corporation as trustees.—A right of presentation and appointment of the master of an hospital with a chapel annexed, *held* to be vested in a corporation as charitable trustees within the meaning of the 71st section of the Act 5 & 6 Will. 4, c. 76, the circumstances of the case showing that the right in question was thus vested not for benefit of the corporation, but for that of a charitable institution independent of the corporation. *In re St. John's Hospital*, 3 M'N. & G. 235.

Case cited in the judgment: *Shrewsbury School case*, 1 Myl. & Cr. 632.

PRACTICE.

1. *Examination of defendant as witness on behalf of plaintiff*.—Decree.—32nd Order of August, 1841.—After the passing of the Act, 6 & 7 Vict. c. 85, two (of four) trustees of a charity, who were defendants to an information complaining of acts of mismanagement, were examined in chief, by mistake, as wit-

nesses, by the relator, without any order for that purpose, instead of being cross-examined. The relator did not tender the depositions in evidence: *Held*, that, by reason of their examination, no decree could be made against them.

Held, also, that the 32nd Order of August, 1841, did not, in such circumstances, entitle the relator to relief against the remaining trustee.

On a motion on behalf of the relator, after the cause had been argued, to suppress the depositions of the trustees, it was ordered that they should be suppressed, on the relator entering into admissions, and on the defendants being permitted to add their evidence; but, on appeal, the order was discharged, the Lord Chancellor being of opinion that, even on these terms, the relator could not be relieved from the mistake. *Attorney-General v. Dew*, 3 De G. & S. 488.

2. *Decree of Commissioners for charitable uses*.—Where confirmed by Court.—Review of.—Although it has been held that a decree of the Court of Chancery confirming the decree of the Commissioners of Charitable Uses is not examinable,—the same being in the nature of a bill of review,—and there cannot be a bill of review upon a bill of review; such an objection does not apply to a proceeding brought to alter the regulations of a charity settled by the decree of the Commissioners and confirmed in Chancery, in a case where no bill of review is necessary. *Attorney-General v. Bishop of Worcester*, 9 Hare, 328.

3. *Charity informations*.—Where supported by public subscriptions.—The Court disapproves of charity informations got up by public meetings and supported by public subscriptions. *Attorney-General v. Bishop of Worcester*, 9 Hare, 368.

SIR S. ROMILLY'S ACT.

1. *Jurisdiction*.—Declaration of properties to which charities entitled.—Previous misapplication.—Under Sir Samuel Romilly's Act (52 G. 3, c. 101) the Court has jurisdiction to declare the proportions in which the charitable objects are entitled, but not to repair a previous misapplication of the funds amongst them.

Effect of the authorities upon the construction of Sir Samuel Romilly's Act. *In re Hall's Charity*, 14 Beav. 115.

Case cited in the judgment: *In re Shrewsbury Charities*, 1 M'N. & G. 324; 1 H. & T. 401.

2. *Cases for exercising summary jurisdiction*.—The jurisdiction of the Court as to charities, under Sir S. Romilly's Act, in cases arising between the trustees and the objects of the trust, may be exercised according to the discretion of the Court, where it can be applied with justice to the parties and benefit to the charity. And *semble*, the Act may safely be resorted to in cases where the objects of the charity have no distinct interests, and where, therefore, the Attorney-General properly represents them all, and in cases where, though there may be dis-

inct interests, no substantial question of principle can arise between the several objects of the charity. *Attorney-General v. Bishop of Worcester*, 9 Hare, 328.

And see *Scheme, settling and altering*, 3.

SCHEME, SETTLING AND ALTERING.

1. If a scheme for the regulation of a charity, settled by a decree, does not operate beneficially for the charity, and the Attorney-General considers that the interests of the charity would, consistently with the foundation, usage, and law, be promoted by an alteration of the scheme, it is competent to him to apply to the Court for such alteration; but schemes which have been settled under the directions of the Court ought not to be disturbed upon merely speculative views, or in matters of discretion or regulation, upon which Judges or Attorneys-General may differ in opinion, or except upon substantial grounds and clear evidence, not only that the scheme does not operate beneficially, but that it can, by the alteration, be made to do so consistently with the object of the foundation. *Attorney-General v. Bishop of Worcester*, 9 Hare, 328.

2. *Jurisdiction of the Court as to alteration of former scheme.*—The power of the Court to make alterations as times and circumstances require, in schemes settled by its decrees for the management of charities, does not depend upon the character in which the decree has been made by the Lord Chancellor. *Attorney-General v. Bishop of Worcester*, 9 Hare, 356.

3. *Jurisdiction on petition and information to alter scheme.*—A scheme, settled by decree, which might be altered upon information, may be altered upon petition under Sir S. Romilly's Act, (52 Geo. 3, c. 101,) if otherwise a proper subject for such a petition. *Attorney-General v. Bishop of Worcester*, 9 Hare, 328.

Case cited in the judgment: *Tiverton School case*, *Attorney-General v. Earl of Devon*, 15 Sim. 193.

And see *Practice*, 2.

4. *Schoolmaster.—Dismissal of.—Visitor.*—Injunction granted to restrain trustees of a grammar school removing the master.

By a scheme of the Court for the regulation of a grammar school founded by King Edward VI., authority was given to the trustees "upon such grounds as they should, at their discretion, in the due exercise and execution of the powers and trusts reposed in them, deem just," to remove the master at one, and confirm it at a subsequent special meeting. The trustees having grounds of complaint against the master, they, without his knowledge, referred the matter to a committee, who investigated the case in his absence and without his knowledge, and reported against him. The trustees, without communicating the report or hearing him, confirmed it in his absence, and resolved to remove him; and they summoned a second meeting to confirm the resolution. The master then attended and was heard, and the removal was confirmed without any other hearing or inquiry in his presence. The Court

held, first, that the regulation did not confer upon the trustees an arbitrary power to dismiss the master, upon any grounds which they might deem just, free from any control of this Court; and, secondly, that the master had had no proper opportunity afforded him of defending himself,—no sufficient means of explanation, and no means of proving his defence, and, on motion, the trustees were restrained from enforcing the dismissal and ejecting the master. *Willis v. Childe*, 13 Beav. 117.

Case cited in the judgment: *Fremington School case*, 10 Jur. 512.

5. *Schoolmaster.*—The revenues of a charity grammar school having increased tenfold, the Court, on a vacancy, restrained the appointment of a new master, until something had been settled as to a new scheme.

Subsequently, liberty was given to appoint a new master, he taking his office subject to any future alterations to be directed by the Court. *Attorney-General v. Warden, &c., of the Louth Free School*, 14 Beav. 201.

SCHOOL.

1. *Admission of boarders.*—There is no general rule against the admission of boarders in grammar schools; but the number of boarders admitted ought not to be such as in any manner to affect the admission of free boys, or the means of educating them to the best advantage, according to the provisions of the scheme. *Attorney-General v. Bishop of Worcester*, 9 Hare, 328.

Cases cited in the judgment: *Attorney-General v. Earl of Devon*, 15 Sim. 193; *Attorney-General v. Earl of Stamford*, 16 Sim. 453; 1 Phill. 737.

2. *How term "Free" to be construed.*—The term "free school" is flexible in its meaning, and must be construed according to the context and usage. It has no reference to the instruction given, but to the terms on which it is given. *Attorney-General v. Bishop of Worcester*, 9 Hare, 358.

Case cited in the judgment: *Attorney-General v. Jackson*, 2 Keen, 541.

3. *Confined to Church of England.—Evidence of.—Usage.*—Although there be reason to suspect that a school was in connexion with the Church of England, in the absence of any positive evidence confining the benefit of the charity to members of the Church of England,—the usage having been to admit the children of dissenters to the benefits of the school,—the question of their admissibility must be governed by usage. *Attorney-General v. Bishop of Worcester*, 9 Hare, 328.

4. *Established in 17th century.—Instruction intended to be pursued.*—The foundation of a school in or before the 17th century, for the instruction of children and youth in good literature and learning, goes far to show that it was intended for instruction in the learned languages. *Attorney-General v. Bishop of Worcester*, 9 Hare, 359.

5. *For education of children in certain town.*—Distinction between schools-endowed for the education of children and youth in a certain town, in which the inhabitants might therefore take as boarders boys resorting to the place for their education, and schools endowed for the education of boys born in the town in which the school is situated. *Attorney-General v. Bishop of Worcester*, 9 Hare, 363.

Case cited in the judgment: *Bingley School case*, 2 J. & W. 353.

6. *Conduct of.*—If, on the one side there may be evils, there are on the other great advantages resulting from the admixture of children of the upper and lower classes in the same school. *Attorney-General v. Bishop of Worcester*, 9 Hare, 365.

Case cited: *Attorney-General v. Earl of Stamford*, 1 Phill. 761.

7. *Master, maintenance of out of charity without boarders.*—The question is not whether a competent master of a grammar school can be provided for a given income, but by what means the services of a superior master can be secured; and there is no rule that the Court will exclude boarders in all cases where the income of the charity is sufficient for the maintenance of the master. *Attorney-General v. Bishop of Worcester*, 9 Hare, 365.

8. *Grammar school.—Evidence.*—Evidence on which the Court concluded that a school was a grammar school within the jurisdiction of the Court, under Sir Eardley Wilmot's Act (3 & 4 Vict. c. 77). *Attorney-General v. Bishop of Worcester*, 9 Hare, 359.

And see *Scheme*, 4, 5.

TRUSTEES.

1. *Right of appointing new trustees.—Parish.—Legal estate.—Presumption.—Church Building Act.*—The right of selecting new trustees of a parish charity held to belong to the rate-payers in vestry, and not to the surviving trustees.

In 1671, an estate was purchased out of parish funds, and was conveyed to the rector, churchwardens, and 12 parishioners, for the relief of the poor inhabitants. The deed was lost. New trustees were appointed by deed, dated in 1701, which recited that the deed of 1671 provided, that when the trustees were reduced to five, they should convey the premises to themselves and 11 other parishioners. In 1735, 1769, 1782, and 1806, new trustees were appointed by the parishioners, but the deeds executed in 1769, 1782, and 1806, contained a proviso, that the new trustees should be nominated by the five survivors. In 1831 and 1842 new trustees were appointed by the old trustees: *Held*, upon the whole, that the last appointments were invalid, and that the right of nominating new trustees belonged to the parishioners, and not to the surviving trustees.

The legal estate was presumed to be vested in the persons to whom it was purported to be conveyed, notwithstanding some irregularities.

Special directions were asked to be given to the Master as to taking the provisions of the Church Building Acts into consideration in settling the scheme, the parish being divided into eight separate districts, and the money being to be distributed by the rector and churchwardens; and it was also asked, that directions should be given as to the mode of distribution in each district of the portion allotted to it. The former was refused, and it was *held*, that the Master could take the latter into consideration without any special direction. *Attorney-General v. Dalton*, 13 Beav. 141.

2. *Attorney-General.—Parens patrie.*—The Attorney-General acts on behalf of the Crown as *parens patrie*, and represents all the objects of the charity, who are thus, in effect, plaintiffs through him. *Attorney-General v. Bishop of Worcester*, 9 Hare, 361.

3. *Conduct of trustees depending on an exercise of discretion.*—Where trustees are appointed to execute a trust according to discretion, they are not bound to state reasons for any conclusion at which they may arrive in fulfilling the duty imposed on them: their discretion must, however, be exercised with an absence of indirect motives, with honesty of intention, and with a fair consideration of the subject; and the duty of the Court generally is to see that the discretion of the trustees has been thus exercised, and not to deal with the accuracy of the conclusion at which they may have arrived.

If, however, in such cases, trustees think fit to state a reason for their conclusion, the Court may consider the validity of the reason thus stated, and if it sees that the reason does not justify the decision, it may correct the decision accordingly.

Trustees of a charity were to select, out of certain parishes named, a lad to be brought up as a minister of the Church of England, his parents not being able to educate him for that situation, and in the event of no suitable candidate being found in the specified parishes, then to select a lad from any other parish. On a vacancy occurring, the trustees chose C. J., a lad not of the specified parishes, and declared the election without stating any reasons for their choice. On a petition presented to set aside this election, and to obtain a decree that the trustees ought to have elected W. G., a lad of one of the specified parishes: *Held*, that the trustees were right in abstaining from the statement of any reasons for the selection they had made, and that in the absence of any proof that they had exercised their discretion otherwise than fairly and honestly, the Court had no jurisdiction to interfere on the question of the correctness of their decision.

The petition was dismissed accordingly, the petitioners paying their own costs, and the costs of the trustees being paid out of the funds of the charity. *In re Beloved Wilkes' Charity*, 3 M'N. & G. 440.

Case cited in the judgment: *Rex v. Archbishop of Canterbury*, 15 East, 117.

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COUNTY COURTS ADVOCACY.

ETIQUETTE OF THE BAR.

It was not without some ground to justify the reservation we stated in a late Number, (p. 172,) that no one of our Bar-governed contemporaries had *yet* suggested that barristers should abandon the established etiquette of the Profession, and practise in the County Courts without the intermediary agency of an attorney. It was gratifying to record the apparent concurrence of the legal periodical press with the sentiments emphatically announced by the Law Lords when the County Court Arrangement Act was under the consideration of Parliament. Our satisfaction, however, was premature and has been short-lived. A legal contemporary,¹ supposed, we believe not incorrectly, to represent the views and wishes of a large section of the Junior Bar, in an article on the prospects of this branch of the Profession in connexion with the County Courts, proposes, as a first move we suppose towards the destruction of an inconvenient usage, that the Bar should appear in Court for defendants "without the formality of instructions by an attorney." The cases to which this new rule of practice is considered especially applicable are those where the parties are poor, and where the answer to a plaintiff's claim is one of a simple character, but to which the party himself is unable to do justice.

That we may not be supposed to detract from the weight of the arguments employed in enforcing this recommendation, and may avoid the hazard of misrepresenting the nature and extent of the suggestions in which our contemporary has indulged, we

subjoin the paragraph in which this notable scheme is broached. That it was contemplated before the County Courts' Arrangement Act was submitted to the House of Commons there is abundant reason to believe :—

"We venture to express our opinion that, considering the nature and objects of the County Courts, there are cases in which the Bar ought to relax the rule of etiquette. Where a party is poor, especially in the case of a defendant, and when the answer to a plaintiff's claim is one of a simple character, but to which the party himself is unable to do justice; we really think it to be *the duty of the Bar* to lend their assistance in Court, without the formality of instructions by an attorney. *Such a course would not in any way interfere with the rights or profits of attorneys*; and if all proceedings of this nature were properly watched by the Bar, there would be no danger of its being abused, unless by men who, in any circumstances, would disregard the rules of the Profession. Again, we venture to think, that in actions for sums under 20*l.*, it would be proper for the Bar to take half-guinea fees in cases of no great difficulty. We do not of course mean to accede to the plan which has been proposed, of dividing the guinea allowed by the Judge with the attorney, but should wish the matter done openly and *bonâ fide*—the brief marked as a half-guinea brief, and the Judge allowing the half-guinea when he thought proper. To this relaxation, if it be such, the attorneys could have no possible objection. If any of the Bar should object to it, we have nothing further to say, than that it appears to us *absolutely necessary* in the circumstances. We see nothing peculiarly degrading in half-guinea fees, and no one has ever thought proper to object to them on this account in the Courts at Westminster Hall. But whatever may be thought of this, the question to our minds resolves itself into this? Shall we take half-guinea fees or throw away a *great opportunity*? We cannot disguise from ourselves the fact, that it is to the County Courts the junior must now look, and if they are unwilling to accommodate them-

¹ The Legal Examiner, 3rd July, 1852.
VOL. XLIV. No. 1,271.

selves to circumstances, they must bear the consequences which it is easy to foresee."

The pretext, for such we are justified in describing it, upon which the Legislature was induced to repeal the provision of the County Courts' Act which interdicted a barrister from appearing in these Courts without the intervention of an attorney was, that it was necessary to protect the Bar against combination. The principle of *protection*, however, seems to be now repudiated here as well as in other quarters, and an invasion is undisguisedly recommended. It is the *duty*, forsooth, of the Bar to lend their assistance in Court to poor defendants without the formality of instructions from an attorney. Now, in the County Courts, as in all other Courts, one half of the suitors are necessarily defendants. What proportion is to be considered as *poor*, or what is to be the standard of poverty, it is not so easy to calculate. It is not suggested, however, that "*poor*" defendants, any more than those who are *rich*, are entitled to the assistance of counsel without a fee. The notion of sharing the fee is scornfully rejected, but "*a great opportunity*" will be lost if the Bar do not take half-guinea fees. The liberality of the proposal is therefore manifest, and in this instance, as in many others, we find that charity begins at home and stays there.

Let it not be supposed we conceive it probable that the Bar as a whole will assent to or countenance the recommendations thus put forth by the organ of the Junior Bar. The pretence, if any ever existed, for an interference with professional etiquette has ceased in the County Courts, inasmuch as the Legislature has thought fit to provide that in those Courts one attorney shall not be retained as an advocate by another. We have already directed attention to the surreptitious and unfair manner in which this provision was introduced into the Act. Whilst upon this subject, we must be permitted to express our dissent from a proposition enunciated with some confidence by another of our contemporaries—*The Law Times*. In the Number of that Journal published on Saturday, July 10, we find the following paragraph in reference to the provision foisted into the County Courts' Arrangement Act at the last moment, no one knows by whom:—

"It will be remembered that the Court of Queen's Bench some time ago expressed a very decided opinion, that it was illegal for an attorney to act as advocate retained by another attorney, and that his only right to appear in

any Court was as attorney for the party. The new provision thus introduced converts the law as pronounced by the Judges into statute law, it does not make a new law, it merely confirms the law previously existing. But it makes a considerable change in practice, for notwithstanding the law, it was the universal custom of attorneys to give briefs to one another in the County Courts, as well as in other inferior Courts. An attorney able to talk conducted the case for the attorney not so gifted with words."

Premising that the italics in the above are our contemporary's, and desiring to treat with all possible respect the legal research of the learned writer, we venture to question every substantive proposition embodied in a paragraph, which we must be excused for considering as far from complementary to the largest branch of the Legal Profession.

First, we deny that the Court of Queen's Bench has ever decided that it was illegal for an attorney to act as an advocate retained by another attorney, and that his only right to appear in any Court was as attorney for the party.

How such a case might be decided by the Court of Queen's Bench, if the point was submitted for its decision, we do not presume to anticipate. We *do* presume that the Court would not decide the question without hearing it argued. Our assertion is, that no such question was ever submitted to that or to any other of the Superior Courts for its determination. If there has been such a case, let it be referred to.

Again, we dispute the allegation that the new provision introduced in the statute just passed, does not make a new law but confirms the law previously existing.

The law is contained in the statutes or in judicial decisions of the Courts to be found in the recognised reports. It does not consist in imaginative theories generated by the wishes of those who adopt them. Now, we repeat that there is no reported case deciding the proposition of law here laid down, and that until the 30th of June last, when the Act 15 & 16 Vict. c. 54, obtained the Royal Assent, there is no record of any statute containing a similar provision. If we are wrong, the case or statute may readily be referred to.

Passing by the somewhat offensive imputation, that the attorneys acted in violation of the law, we traverse the universality of the custom as alleged. Our learned contemporary will excuse us for suggesting, that he evinces a limited knowledge of practice if he supposes it to be the "*universal custom*" of

attorneys to give briefs to one another, either in the County Courts or in other inferior Courts. Excluding from consideration the large proportion of attorneys who never had nor desire to have any business in the County Courts, and to whom the argument is wholly inapplicable, we can give our deceived contemporary the names of one hundred attorneys carrying on business within three miles of his own office, who have never given a brief to another attorney, either in the County Courts or in any other Court, but who, whenever the occasion would justify such an expense, and the client was willing to afford it, have availed themselves of the ablest and most experienced counsel in stuff that they could persuade to accept a brief. It is surely rather hard, as well as ungracious upon those who, under the combined influence of interest and inclination, have uniformly adopted this course to include them in the sweeping censure, which at all events should be confined to those who have contravened the law as expounded by our imaginative contemporary.

NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

MASTER IN CHANCERY ABOLITION. 15 & 16 VICT. c. 80.

Office of Masters in Ordinary in Chancery abolished; s. 1.

Vacancies in office of Masters not to be filled up; s. 2.

Two of the Masters in Ordinary released from their duties on first day of Michaelmas Term, 1852, &c. Proviso as to certain matters depending before the said Masters; s. 3.

Option to Masters to retire according to seniority, &c. Power to Lord Chancellor to release remaining Masters; s. 4.

Masters salaries and compensation allowance continued by way of retiring pensions, &c.; s. 5.

Retiring pensions, &c. to be paid in the same manner as present salaries; s. 6.

Power to Masters to summon parties, &c., and to settle and wind up proceedings before them; s. 7.¹

Power to Court, upon Master's report or certificate, to make order for prosecution or final disposal of any suit, &c., and for payment of costs, &c.; s. 8.

On neglect of parties to bring Master's report before the Court, solicitor to Suitors' Fee Fund to do so, and his costs provided for; s. 9.

No fresh references to Masters, except in cases already before them, and in matters under Winding-up Acts, 1848 and 1849. Until all the Masters are released from their duties, those remaining shall prosecute all the business depending. Power now vested in Masters reserved to them for such purposes; s. 10.

Power to Master of the Rolls and Vice-Chancellors to sit at Chambers for the despatch of business, &c.; s. 11.

Power to Lord Chancellor to provide chambers for the Masters of the Roll and Vice-Chancellors; s. 12.

Judges to have same power and jurisdiction as in open Court; s. 13.

Orders made in Chambers to be ordinarily drawn up by Judges' clerks, but Judges may direct them to be drawn up by registrars of the Court, and may require their attendance at Chambers for the purpose; s. 14.

Orders made at Chambers to have same force as order of Court, &c.; s. 15.

Power to Judges to appoint two chief clerks to each Court to assist in the business of the Court; s. 16.

Chief clerks to Judges to have been chief clerks to Masters in Ordinary, or solicitors or attorneys of 10 years practice. Certain chief clerks to be chief clerks of three of the Equity Judges; s. 17.

Power to Judges to appoint junior clerks; s. 18.

Power to Lord Chancellor to remove any officer appointed under this Act engaging in other employment or accepting any fee or emolument whatever other than his salary; s. 19.

Solicitors, &c., appointed to any office under this Act to be struck off the Rolls; s. 20.

Chief clerks to hold office during good behaviour; and clerks during pleasure; ss. 21, 22.

Chief and junior clerks to be under control and direction of Judges; s. 23.

Chief and junior clerks subject to same penalties, &c., as imposed, &c. under Act 3 & 4 Wm. 4 c. 94, as respects officers of the Court of Chancery; s. 24.

Power to Lord Chancellor, with concurrence of Judges to remove chief clerks; s. 25.

Business to be disposed of in Chambers by the Judges; s. 26.

Judges may adjourn from open Court to Chambers, and *vice versa*, the consideration of any matter; s. 27.

Mode of proceeding before Judges at Chambers to be by summons as at common law; s. 28.

Sec. 7, 8, 9, came into operation on 1st July.

Michaelmas Term shall be made in relation to such excepted matters as aforesaid; and the same, if necessary, shall be distributed amongst such remaining Masters in such manner as the Lord Chancellor shall direct; and the powers and authorities now vested in them are hereby reserved to them for the purpose of executing and performing all the duties, matters, and things which may be still referred to them, or which they may be lawfully called upon to perform.

11. From and after the first day of Michaelmas Term, 1852, it shall be lawful for the Master of the Rolls and the Vice-Chancellors for the time being and they are hereby required to sit at Chambers for the despatch of such part of the business of the said Court as can, without detriment to the public advantage arising from the discussion of questions in open Court, be heard in Chambers, according to the directions herein-after in that behalf specified or referred to; and the times at and during which they respectively shall so sit shall be from time fixed by them respectively.

12. The Chamber business of the Master of the Rolls and of every Vice-Chancellor shall be carried on in conjunction with his Court business; but as no rooms are attached to the Courts of the Vice-Chancellors in which such Chamber business can be transacted, it shall be lawful for the Lord Chancellor to cause Chambers to be provided for every of them respectively for that purpose until Courts with proper rooms attached can be provided for them.

13. The Master of the Rolls and every of the Vice-Chancellors respectively when sitting in Chambers shall have the same power and jurisdiction in respect of the business to be brought before them, as if they were respectively sitting in open Court.

14. The orders made by the Master of the Rolls and Vice-Chancellors respectively when sitting in Chambers shall ordinarily be drawn up there by their respective clerks, to be appointed as hereinafter mentioned, but with power to each of such Judges to direct any of such orders to be drawn up by the registrar of the said Court in like manner as orders made by a Judge of the said Court in open Court are drawn up, for which purpose the registrars of the said Court shall, when required, attend the Master of the Rolls and the Vice-Chancellors respectively when sitting at Chambers in such order and manner as shall be found most convenient for furthering the business of the said Court, and as the Lord Chancellor, with the concurrence of the Master of the Rolls and Vice-Chancellors, or any two of them, shall from time to time by any general order direct.

15. All orders of the Master of the Rolls or of any Vice-Chancellor, made by him at Chambers, shall have the force and effect of orders of the Court of Chancery, and such orders may be signed and enrolled in like manner.

16. It shall be lawful for the Master of the Rolls, and every of the Vice-Chancellors for the time being respectively, with the approba-

tion of the Lord Chancellor, to appoint two chief clerks each to be respectively attached to each such Judge and his successors in office, for the purpose of assisting in the general business of each Court, and the causes and matters belonging thereto, and on any vacancy in such office of chief clerk to supply such vacancy.

17. No person shall be appointed chief clerk to the Master of the Rolls or any Vice-Chancellor unless he shall have been chief clerk to one of the Masters in Ordinary of the said Court, or have been admitted on the Roll of Solicitors or Attorneys in one of the Courts at Westminster Hall, and practised as such solicitor or attorney for the period of ten years at least immediately preceding his appointment: Provided always, that George Whiting and Henry Leman, the present chief clerks of the said Masters hereby released as aforesaid, and Charles Pugh, chief clerk in the office of the Master now vacant, shall on the said first day of Michaelmas Term, 1852, become and they are hereby appointed chief clerks of three of the said Equity Judges, and their respective successors in office.

18. It shall be lawful for the Judge of each Court to appoint a junior clerk to each chief clerk of his Court, and on any vacancy in such office to supply such vacancy.

19. If any person who shall accept any office under this act shall engage in any other employment whatever whilst he holds such office, or shall receive any sum of money or benefit other than his salary and what may be allowed or directed to be taken by him under any Act of Parliament or order of the said Court or of the Lord Chancellor, for any act done or pretended to be done, or any attendance given or pretended to be given, either with or without the consent or direction or pretended consent or direction of the Judge, in relation to or arising out of any proceeding in his office, or in any office of or connected with the Court of Chancery, or if such person being or having been a solicitor or attorney, shall directly or indirectly receive or secure to himself any continuing benefit from any business or firm in which he may have been engaged previously to his appointment to such office, the person so offending may be removed from his office by order of the Lord Chancellor, and shall be rendered incapable of afterwards holding any office, situation, or employment in the said Court.

20. Every solicitor or attorney who shall be appointed to and shall accept any office under this act shall cease to be an attorney or solicitor, and shall forthwith procure himself to be struck off the Roll of Solicitors of the High Court of Chancery, and off the Roll of any of her Majesty's Courts of Record at Westminster on which his name may be.

21. Every such chief clerk shall hold his office during his good behaviour, and so long as he shall personally give his attendance upon his duties, and shall conduct himself honestly and faithfully in the execution of the duties of his office, but subject to the power hereinafter

contained to remove any chief clerk for any cause which the Lord Chancellor and Judges removing may think sufficient.

22. Every such junior clerk shall hold his office at the pleasure of the Judge to whose Court he shall be attached.

23. Such chief clerks and junior clerks shall be respectively under the control of the Judge to whose Court they shall respectively be attached, and shall attend at such places, during such times, and for such hours in each day, and perform such duties, as such Judge shall from time to time direct.

24. Every chief clerk and every junior clerk to be appointed under this Act shall be subject and liable to such and the same prohibitions, prosecutions, penalties, and punishments, as are by an Act passed in the Session holden in the 3 & 4 Wm. 4, c. 94, imposed and directed with respect to persons holding any office, situation, or employment in the said Court of Chancery, or under any of the Judges or officers thereof, in the same manner as if the enactments therein contained relating to such officers of the said Court respectively were here repeated.

25. It shall be lawful for the Lord Chancellor, with the concurrence of the Master of the Rolls and Vice-Chancellors for the time being, or any two of them, by any order to remove any chief clerk to be appointed under this Act from his office, without stating any cause for such removal.

26. The business to be disposed of by the Master of the Rolls and Vice-Chancellors respectively while sitting at Chambers shall consist of such of the following matters as the Judge shall from time to time think may be more conveniently disposed of in Chambers than in open Court; *videlicet*, applications for time to plead, answer, or demur; for leave to amend bills or claims; for enlarging publication; and also applications for the production of documents; applications relating to the conduct of suits or matters; applications as to the guardianship and maintenance of infants; matters connected with the management of property; and such other matters as each such Judge may from time to time see fit, or as may from time to time be directed by any general order of the Lord Chancellor.

27. It shall be lawful for the Master of the Rolls and every of the Vice-Chancellors respectively when sitting in open Court to adjourn for consideration in Chambers any matters which, in the opinion of such Judge, may be more conveniently disposed of in Chambers, or, when sitting in Chambers, to direct any matter to be heard in open Court which he may think ought to be so heard.

28. The mode of proceeding before the Master of the Rolls and Vice-Chancellors respectively at Chambers shall be by summons, and as near as may be according to the form adopted by the Judges of the Superior Courts of Common Law when sitting at Chambers.

29. From and after the first day of Michaelmas Term, 1852, the Master of the Rolls and the

Vice-Chancellors respectively shall have the sole power (subject to any rule which may be made by the Lord Chancellor with the advice and assistance of them or any two of them) to order what matters and things shall be investigated by and before their respective chief clerks, either with or without their direction, during their progress, and what matters and things shall be heard and investigated by themselves; and particularly, if the Judge shall so direct, his chief clerks respectively shall take accounts, and make such inquiries as have usually been prosecuted before the chief clerks of the present Masters; and the Judge shall give such aid and directions in every or any such account or inquiry as he may think proper, but subject nevertheless to the right hereinafter provided for the suitor to bring any particular point before the Judge himself.

30. Each chief clerk shall, for the purpose of any proceedings directed by the Master of the Rolls or any Vice-Chancellor to be taken before him, have full power to issue advertisements, to summon parties and witnesses, to administer oaths, to take affidavits and acknowledgments, other than acknowledgments by married women, to receive affirmations, and, when so directed by the Judge to whose Court he is attached, to examine parties and witnesses either upon interrogatories or *visd voce*, as such Judge shall direct.

31. Parties and witnesses so summoned shall be bound to attend in pursuance of any such summons, and shall be liable to process of contempt, if like manner as parties or witnesses are now liable thereto in case of disobedience to any order of the said Court, or in case of default in attendance, in pursuance of any order of the said Court, or of any writ of subpoena *ad testificandum*; and all persons swearing or affirming before any such chief clerk shall be liable to all such penalties, punishments, and consequences for any wilful and corrupt false swearing or affirming contained therein as if the matters sworn or affirmed had been sworn and affirmed before any person now by law authorised to administer oaths, to take affidavits, and to receive affirmations.

32. The directions to be given by the Master of the Rolls or any Vice-Chancellor for or touching any proceedings before his chief clerk shall require no particular form, but the result of such proceedings shall be stated in the shape of a short certificate to the Judge, and shall not be embodied in a formal report, unless in any case the Judge shall see fit so to direct; and when the Judge shall approve of such certificate or report he shall sign the same in testimony of his adopting the same.

33. No exceptions shall lie to any certificate or report of the chief clerk, although signed and adopted by the Judge; but any party shall, either during the proceedings before such chief clerk, or within such time after such proceedings shall have been concluded, and before the certificate or report shall have been signed and adopted, as the Lord Chancellor shall by any general order direct, be at liberty to take the

Michaelmas Term shall be made in relation to such excepted matters as aforesaid; and the same, if necessary, shall be distributed amongst such remaining Masters in such manner as the Lord Chancellor shall direct; and the powers and authorities now vested in them are hereby reserved to them for the purpose of executing and performing all the duties, matters, and things which may be still referred to them, or which they may be lawfully called upon to perform.

11. From and after the first day of Michaelmas Term, 1852, it shall be lawful for the Master of the Rolls and the Vice-Chancellors for the time being and they are hereby required to sit at Chambers for the despatch of such part of the business of the said Court as can, without detriment to the public advantage arising from the discussion of questions in open Court, be heard in Chambers, according to the directions herein-after in that behalf specified or referred to; and the times at and during which they respectively shall so sit shall be from time fixed by them respectively.

12. The Chamber business of the Master of the Rolls and of every Vice-Chancellor shall be carried on in conjunction with his Court business; but as no rooms are attached to the Courts of the Vice-Chancellors in which such Chamber business can be transacted, it shall be lawful for the Lord Chancellor to cause Chambers to be provided for every of them respectively for that purpose until Courts with proper rooms attached can be provided for them.

13. The Master of the Rolls and every of the Vice-Chancellors respectively when sitting in Chambers shall have the same power and jurisdiction in respect of the business to be brought before them, as if they were respectively sitting in open Court.

14. The orders made by the Master of the Rolls and Vice-Chancellors respectively when sitting in Chambers shall ordinarily be drawn up there by their respective clerks, to be appointed as hereinafter mentioned, but with power to each of such Judges to direct any of such orders to be drawn up by the registrar of the said Court in like manner as orders made by a Judge of the said Court in open Court are drawn up, for which purpose the registrars of the said Court shall, when required, attend the Master of the Rolls and the Vice-Chancellors respectively when sitting at Chambers in such order and manner as shall be found most convenient for furthering the business of the said Court, and as the Lord Chancellor, with the concurrence of the Master of the Rolls and Vice-Chancellors, or any two of them, shall from time to time by any general order direct.

15. All orders of the Master of the Rolls or of any Vice-Chancellor, made by him at Chambers, shall have the force and effect of orders of the Court of Chancery, and such orders may be signed and enrolled in like manner.

16. It shall be lawful for the Master of the Rolls, and every of the Vice-Chancellors for the time being respectively, with the approba-

tion of the Lord Chancellor, to appoint two chief clerks each to be respectively attached to each such Judge and his successors in office, for the purpose of assisting in the general business of each Court, and the causes and matters belonging thereto, and on any vacancy in such office of chief clerk to supply such vacancy.

17. No person shall be appointed chief clerk to the Master of the Rolls or any Vice-Chancellor unless he shall have been chief clerk to one of the Masters in Ordinary of the said Court, or have been admitted on the Roll of Solicitors or Attorneys in one of the Courts at Westminster Hall, and practised as such solicitor or attorney for the period of ten years at least immediately preceding his appointment: Provided always, that George Whiting and Henry Leman, the present chief clerks of the said Masters hereby released as aforesaid, and Charles Pugh, chief clerk in the office of the Master now vacant, shall on the said first day of Michaelmas Term, 1852, become and they are hereby appointed chief clerks of three of the said Equity Judges, and their respective successors in office.

18. It shall be lawful for the Judge of each Court to appoint a junior clerk to each chief clerk of his Court, and on any vacancy in such office to supply such vacancy.

19. If any person who shall accept any office under this act shall engage in any other employment whatever whilst he holds such office, or shall receive any sum of money or benefit other than his salary and what may be allowed or directed to be taken by him under any Act of Parliament or order of the said Court or of the Lord Chancellor, for any act done or pretended to be done, or any attendance given or pretended to be given, either with or without the consent or direction or pretended consent or direction of the Judge, in relation to or arising out of any proceeding in his office, or in any office of or connected with the Court of Chancery, or if such person being or having been a solicitor or attorney, shall directly or indirectly receive or secure to himself any continuing benefit from any business or firm in which he may have been engaged previously to his appointment to such office, the person so offending may be removed from his office by order of the Lord Chancellor, and shall be rendered incapable of afterwards holding any office, situation, or employment in the said Court.

20. Every solicitor or attorney who shall be appointed to and shall accept any office under this act shall cease to be an attorney or solicitor, and shall forthwith procure himself to be struck off the Roll of Solicitors of the High Court of Chancery, and off the Roll of any of her Majesty's Courts of Record at Westminster on which his name may be.

21. Every such chief clerk shall hold his office during his good behaviour, and so long as he shall personally give his attendance upon his duties, and shall conduct himself honestly and faithfully in the execution of the duties of his office, but subject to the power hereinafter

contained to remove any chief clerk for any cause which the Lord Chancellor and Judges removing may think sufficient.

22. Every such junior clerk shall hold his office at the pleasure of the Judge to whose Court he shall be attached.

23. Such chief clerks and junior clerks shall be respectively under the control of the Judge to whose Court they shall respectively be attached, and shall attend at such places, during such times, and for such hours in each day, and perform such duties, as such Judge shall from time to time direct.

24. Every chief clerk and every junior clerk to be appointed under this Act shall be subject and liable to such and the same prohibitions, prosecutions, penalties, and punishments, as are by an Act passed in the Session holden in the 3 & 4 Wm. 4, c. 94, imposed and directed with respect to persons holding any office, situation, or employment in the said Court of Chancery, or under any of the Judges or officers thereof, in the same manner as if the enactments therein contained relating to such officers of the said Court respectively were here repeated.

25. It shall be lawful for the Lord Chancellor, with the concurrence of the Master of the Rolls and Vice-Chancellors for the time being, or any two of them, by any order to remove any chief clerk to be appointed under this Act from his office, without stating any cause for such removal.

26. The business to be disposed of by the Master of the Rolls and Vice-Chancellors respectively while sitting at Chambers shall consist of such of the following matters as the Judge shall from time to time think may be more conveniently disposed of in Chambers than in open Court; *videlicet*, applications for time to plead, answer, or demur; for leave to amend bills or claims; for enlarging publication; and also applications for the production of documents; applications relating to the conduct of suits or matters; applications as to the guardianship and maintenance of infants; matters connected with the management of property; and such other matters as each such Judge may from time to time see fit, or as may from time to time be directed by any general order of the Lord Chancellor.

27. It shall be lawful for the Master of the Rolls and every of the Vice-Chancellors respectively when sitting in open Court to adjourn for consideration in Chambers any matters which, in the opinion of such Judge, may be more conveniently disposed of in Chambers, or, when sitting in Chambers, to direct any matter to be heard in open Court which he may think ought to be so heard.

28. The mode of proceeding before the Master of the Rolls and Vice-Chancellors respectively at Chambers shall be by summons, and as near as may be according to the form adopted by the Judges of the Superior Courts of Common Law when sitting at Chambers.

29. From and after the first day of Michaelmas Term, 1852, the Master of the Rolls and the

Vice-Chancellors respectively shall have the sole power (subject to any rule which may be made by the Lord Chancellor with the advice and assistance of them or any two of them) to order what matters and things shall be investigated by and before their respective chief clerks, either with or without their direction, during their progress, and what matters and things shall be heard and investigated by themselves; and particularly, if the Judge shall so direct, his chief clerks respectively shall take accounts, and make such inquiries as have usually been prosecuted before the chief clerks of the present Masters; and the Judge shall give such aid and directions in every or any such account or inquiry as he may think proper, but subject nevertheless to the right hereinafter provided for the suitor to bring any particular point before the Judge himself.

30. Each chief clerk shall, for the purpose of any proceedings directed by the Master of the Rolls or any Vice-Chancellor to be taken before him, have full power to issue advertisements, to summon parties and witnesses, to administer oaths, to take affidavits and acknowledgments, other than acknowledgments by married women, to receive affirmations, and, when so directed by the Judge to whose Court he is attached, to examine parties and witnesses either upon interrogatories or *voir dire*, as such Judge shall direct.

31. Parties and witnesses so summoned shall be bound to attend in pursuance of any such summons, and shall be liable to process of contempt, in like manner as parties or witnesses are now liable thereto in case of disobedience to any order of the said Court, or in case of default in attendance, in pursuance of any order of the said Court, or of any writ of subpoena *ad testificandum*; and all persons swearing or affirming before any such chief clerk shall be liable to all such penalties, punishments, and consequences for any wilful and corrupt false swearing or affirming contained therein as if the matters sworn or affirmed had been sworn and affirmed before any person now by law authorised to administer oaths, to take affidavits, and to receive affirmations.

32. The directions to be given by the Master of the Rolls or any Vice-Chancellor for or touching any proceedings before his chief clerk shall require no particular form, but the result of such proceedings shall be stated in the shape of a short certificate to the Judge, and shall not be embodied in a formal report, unless in any case the Judge shall see fit so to direct; and when the Judge shall approve of such certificate or report he shall sign the same in testimony of his adopting the same.

33. No exceptions shall lie to any certificate or report of the chief clerk, although signed and adopted by the Judge; but any party shall, either during the proceedings before such chief clerk, or within such time after such proceedings shall have been concluded, and before the certificate or report shall have been signed and adopted, as the Lord Chancellor shall by any general order direct, be at liberty to take the

opinion of the Judge upon any particular point or matter arising in the course of the proceedings, or upon the result of the whole proceeding when it is brought by the chief clerk to a conclusion.

34. When any certificate or report of the chief clerk shall have been signed and adopted by the Judge the same shall be filed in like manner as reports are now filed, and shall thenceforth be binding on all the parties to the proceedings, unless discharged or varied, either at Chambers or in open Court, according to the nature of the case, upon application by summons or motion within such time as shall be prescribed in that behalf by any general order of the Lord Chancellor; and nothing herein contained shall prejudice or affect the power of the Court at any time to open any such certificate or report upon the same or the like grounds as any report of a Master of the said Court which has been absolutely confirmed may now be opened.

35. From and after the first day of Michaelmas Term, 1852, the 13th, 14th, and 15th sections of the Act passed in the Session of Parliament holden in the 3 & 4 W. 4, c. 94, shall be repealed.

36. From and after the first day of Michaelmas Term, 1852, all or any of the powers, authorities, and jurisdiction given to the Masters in Ordinary of the said Court by any act or acts then in force may be exercised by the Master of the Rolls and Vice-Chancellors respectively.

37. From and after the first day of Michaelmas Term, 1852, the powers given to the Masters in Ordinary of the said Court, and to the Court, by sections 7, 8, and 9 of this Act, may be exercised by the Master of the Rolls and Vice-Chancellors respectively with respect to causes, matters, and things which may be depending before them respectively in Chambers; and if and when any such Judge shall be of opinion that any cause, matter, or thing so depending ought to be finally disposed of, unless the parties or some of them can show good cause to the contrary, he shall direct the same to stand in his paper in open Court, giving such notice thereof, if any, as he shall deem right, and proceed to dispose thereof accordingly.

38. It shall be lawful for the Lord Chancellor, with the advice and consent of the Master of the Rolls and Vice-Chancellors, or any two of them, and they are hereby required, forthwith to make and issue General Rules and Orders for regulating the times and form and mode of procedure before the Master of the Rolls and Vice-Chancellors respectively, sitting at Chambers, and their respective chief clerks, and generally the practice of the said Court in respect of the matters to which this Act relates, and for regulating the fees and allowances to solicitors of the said Court in respect to such matters, and also for regulating the fees to be payable by suitors of the said Court to the officers thereof in respect of the business to be conducted before the Master of the Rolls and

Vice-Chancellors respectively sitting at Chambers, and their respective chief clerks; and such rules and regulations may from time to time be recinded, altered, varied, or added to by the like authority; and all such rules and regulations as aforesaid shall take effect as general orders of the said Court: Provided always, that no greater amount of fees shall be payable by the suitors of the said Court to the officers thereof, in respect of the business to be conducted before the Master of the Rolls and the Vice-Chancellors respectively sitting at Chambers, and their respective chief clerks, than is now levied in respect of similar or analogous business in the Masters' Offices.

39. From and after the said first day of Michaelmas Term, 1852, the course of practice and proceeding in the Offices of the Masters in Ordinary of the said Court, so far as the same may be inconsistent with the rules and regulations to be so as aforesaid made by the Lord Chancellor with such advice and consent as aforesaid, shall be abolished; and the Masters in Ordinary of the said Court shall, with reference to the proceedings before them, adopt all such rules and regulations, and shall conduct the business of their respective offices, as nearly as may be, in the manner in which similar business shall be conducted by the Master of the Rolls and Vice-Chancellors respectively, save only that the Master, instead of communicating directly with the Judge, is to report shortly the result of his inquiries to the Court.

40. From and after the first day of Michaelmas Term, 1852, it shall be lawful for the Court or for any Judge thereof when sitting at Chambers to receive and act upon the opinion of conveyancing counsel in actual practice, to be nominated as hereinafter mentioned, in all cases in which, according to the present practice of the Court and of the Master's Office, it has been usual for the Master to require or receive the opinion of conveyancing counsel for his aid and assistance in the investigation of the title to an estate, with a view to an investment of money in the purchase or on mortgage thereof, or with a view to a sale thereof, or in the settlement of a draft of a conveyance, mortgage, settlement, or other instrument, or otherwise, and in such other cases as the Lord Chancellor shall by any general order direct; but it shall be competent for any party to object to any opinion of any such counsel when he shall deem it open to objection, and thereupon the point in dispute shall be disposed of by the Court, or by the Judge sitting in Chambers, according to the nature of the case.

41. It shall be lawful for the Lord Chancellor to nominate any number of conveyancing counsel in actual practice, not less than six, who shall have practised as such for ten years at least, to be the conveyancing counsel upon whose opinion the Court, or any Judge thereof, may act in any of the cases last beforementioned, and to supply vacancies in such list from time to time, and to distribute the business among such counsel in such order and manner as to the Lord Chancellor shall seem fit.

42. It shall be lawful for the said Court, or any Judge thereof, in such way as they may think fit, to obtain the assistance of accountants, merchants, engineers, actuaries, or other scientific persons, the better to enable such Court or Judge to determine any matter at issue in any cause or proceeding, and to act upon the certificate of such persons.

43. The allowances in respect of fees to such conveyancing counsel, accountants, merchants, engineers, actuaries, and other scientific persons shall be regulated by the Taxing Master of the said Court, subject to an appeal to the Judge to whose Court the cause or matter shall be attached, whose decision shall be final.

44. There shall be paid to every chief clerk of the Master of the Rolls and Vice-Chancellors respectively the net yearly salary of 1,200*l.*, and to every junior clerk to be appointed under this Act the net yearly salary of 250*l.*; and it shall be lawful for the Lord Chancellor from time to time by any order to direct that the salary of any such chief clerk as aforesaid may be increased from time to time until the same shall amount to the net yearly sum of 1,500*l.*, and to direct that the salary of such junior clerk may be increased to the net yearly sum of 300*l.*: Provided always, that no such increase shall be made to any such chief clerk until he shall have been in office for three years, nor to such junior clerk until he shall have been in office five years, nor in either case without a certificate from the Judge to whose Court such chief clerk or junior clerk shall be attached, that he has conducted himself in such office to the entire satisfaction of such Judge: Provided also, that the salary to such chief clerk shall not be increased at any one period by any greater amount than the sum of 100*l.*

45. It shall be lawful for the Lord Chancellor, with the consent of the Commissioners of her Majesty's Treasury, by any order made on a petition presented to him for that purpose, to order (if he shall think fit) to be paid to any person executing the office of chief clerk or junior clerk to the Master of the Rolls or any of the Vice-Chancellors, who shall be afflicted with some permanent infirmity disabling him from the due execution of his office, and shall be desirous of resigning the same, an annuity not exceeding two third parts of the yearly salary which such person shall be entitled to at the time of presenting such petition, to be paid and payable at the same times and out of the same funds as compensations under this Act are directed to be paid.

46. It shall be lawful for every person who on the first day of Hilary Term, 1852, held the office of chief clerk to any of the Masters in Ordinary of the said Court of Chancery, and who is not hereby appointed a chief clerk to the Master of the Rolls or to one of the Vice-Chancellors under the authority of this Act, upon the Master to whom he shall be such chief clerk being released from the duties as such Master under the authority of this Act, or upon the death or resignation of any such Master previously to his being so released, to

continue to be entitled to receive during his life, by way of retiring pension, the full amount of his salary as such chief clerk, such salary to be paid and payable out of such funds and in such manner as hereinafter in that behalf directed.

47. It shall be lawful for any person who on the said first day of Hilary Term, 1852, held the office of junior clerk to any Master in Ordinary of the said Court of Chancery hereby released, or who shall be released by the Lord Chancellor under the authority of this Act, to make a claim for compensation to the Commissioners of her Majesty's Treasury for the time being, at any time after the Master in whose office he shall have been employed shall have been released; and such Commissioners are hereby required, within the space of six calendar months after every such claim shall be made, by examination upon oath or otherwise, which oath they and every of them are and is hereby authorised to administer, to inquire whether any, and, if any, what compensation ought to be made to such person claiming such compensation; and in all cases in which it shall appear to the said Commissioners that compensation ought to be granted, it shall be lawful for the said Commissioners, by warrant under their hands, to order and direct that such annual compensation shall be made to the persons claiming such compensations as aforesaid, or any of them, as to the said Commissioners in their discretion shall seem just and reasonable; and all such compensations shall be paid and payable out of such funds and in such manner as hereinafter in that behalf directed: Provided always, that an account of all such compensation shall, within 14 days next after the same shall be so granted, be laid on the table of the House of Commons, if Parliament shall be then assembled, or if Parliament shall not be then assembled, then within 14 days after the meeting of the Parliament then next following.

48. Except as herein otherwise provided, all salaries under this Act shall grow due from day to day, but shall be payable, under an order of the Lord Chancellor, on the 3rd day of Feb., the 3rd day of May, the 3rd day of Aug., and the 3rd day of Nov., in every year, or on such other days as the Lord Chancellor shall from time to time by any order direct, and shall be paid to the parties entitled thereto, or their respective executors or administrators, out of the fund standing in the name of the Accountant-General of the Court of Chancery, to the account intitled "The Suitors' Fee Fund Account," but subject and without prejudice to the payment of all salaries and other sums of money by any former Act or Acts now in force directed or authorised to be paid thereout.

49. Except as herein otherwise provided, all compensations under this Act shall grow due from day to day, but shall be payable on the 3rd day of Feb., the 3rd day of May, the 3rd day of Aug., and the 3rd day of Nov. in every year, or on such other days as the Lord Chancellor shall from time to time by any order di-

rect, and shall be paid to the parties entitled thereto, or their respective executors or administrators, out of the interest and dividends of the Government Parliamentary Securities now or hereafter to be placed in the name of the Accountant-General of the Court of Chancery to the two accounts intituled "Account of Monies placed out for the Benefit and better Security of the Suitors of the High Court of Chancery," and "Account of Securities purchased with surplus Interest arising from Securities carried to an Account of Monies placed out for the Benefit and better Security of the Suitors of the High Court of Chancery," or either of them, by the Governor and Company of the Bank of England, by virtue of any order or orders of the Lord Chancellor to be made from time to time for that purpose, without any draft from the Accountant-General, but subject and without prejudice to the payment of all salaries and other sums of money by any former Act or Acts now in force directed or authorised to be paid thereout.

50. If at any time hereafter any of the Masters in Ordinary of the said Court, or any of their chief or junior clerks, shall be appointed to and shall accept any office or employment connected with any Court of Law or Equity, or under the Crown, or in any public department under the Crown, or if the salary attached to such office or employment, or any retiring pension or allowance in respect thereof, shall equal or exceed in amount the retiring pension or compensation payable to such Master or such clerk under this Act, such last-mentioned retiring pension or compensation shall, during the continuance of such Master or such clerk in such office or employment, or so long as he shall be in the receipt of any retiring pension or allowance in respect thereof equal to or greater than his retiring pension or compensation under this Act, cease to be payable to such Master or such clerk, as the case may be; and if the salary attached to such office, or the retiring pension or allowance in respect thereof, shall be less than the amount of such Master's retiring pension or such clerk's compensation under this Act, such retiring pension or compensation under this Act shall be reduced by the amount of such salary or of such retiring pension or allowance, as the case may be.

51. Such of the Masters' Offices in Southampton Buildings, Chancery Lane, as shall not be assigned by the Lord Chancellor as chambers for the Master of the Rolls and Vice-Chancellors respectively, or shall not be required for the Masters, shall be appropriated to any other purposes connected with the Court of Chancery, as the Lord Chancellor may from time to time direct, or the same may be let as chambers, and the rent thereof paid to the Suitors' Fund; and when all the Masters have resigned, died, or have been released under this act, the offices may be sold by order of the Lord Chancellor, and the proceeds of such sale paid to the Suitors' Fund, in such manner and to such particular account as the Lord Chancellor shall by any order direct;

and it shall be lawful for the Lord Chancellor by any order to direct that the premises so to be sold, and the fee simple and inheritance thereof, shall vest in the purchaser or purchasers of the same, his or their heirs and assigns, or as he or they shall direct; and such order shall have the effect of vesting the same accordingly, without any conveyance or other assurance from her Majesty, in whom the same are now vested by virtue of an act passed in the 32 Geo. 3, c. 42.

52. And whereas by an Act passed in the 5 Vict., sess. 1, c. 5, her Majesty was by sect. 19 empowered to appoint, by Letters Patent under the Great Seal, two fit persons to be additional Judges Assistant to the Lord Chancellor in the discharge of the judicial functions of his office, each of such additional Judges to be called Vice-Chancellors; and by sect. 21 it was provided that nothing therein contained should authorise the appointment of a successor to the Vice-Chancellor secondly appointed under the authority of the said act: And whereas by an Act passed in the Session holden in the 14 & 15 Vict. c. 4, her Majesty was by sect. 1 empowered to appoint, by Letters Patent under the Great Seal, a fit person to be an additional Judge Assistant to the Lord Chancellor in discharge of the judicial functions of his office, in the place of the Right Honourable Sir James Wigram, Knight, who was the Vice-Chancellor secondly appointed under the authority of the said Act of the 5 Vict., and who had resigned the office of Vice-Chancellor to which he had been so appointed: And whereas the Right Honourable Sir George James Turner, Knight, is the Vice-Chancellor appointed under the said last-mentioned Act: And whereas by sect. 9 of the same Act it was provided, that nothing therein contained should authorise the appointment of a successor to the Vice-Chancellor appointed under the authority thereof: And whereas by virtue of this Act additional duties will devolve upon the Judges of the said Court, and it is expedient that any vacancy which may occur in the said office of Vice-Chancellor should be supplied: Be it therefore enacted, That it shall be lawful for her Majesty, from time to time when and as any vacancy shall occur in the office of Vice-Chancellor now held by the said Sir George James Turner, by the death, resignation, or removal from office of the said Sir George James Turner, or his successor for the time being, it shall be lawful for her Majesty, by Letters Patent under the Great Seal of the United Kingdom, to appoint a fit person, being or having been a barrister of 15 years' standing at the least, to supply such vacancy.

53. The Vice-Chancellor to be appointed under this Act shall have all the same powers and privileges, and the same rank, and shall be subject to the same provisions, duties, and observances, as the said Sir George James Turner shall, at or immediately before his death, resignation, or removal from office, have or be subject to under the said Act of the 14 & 15 Vict. c. 4, and this Act, or any other Act or

Acts then in force, excepting that, as between himself and the other Vice-Chancellors or Vice-Chancellor for the time being, he shall have rank and precedence next after the Vice-Chancellors or Vice-Chancellor, if any, who may be senior to him in appointment to office.

54. Such Vice-Chancellor shall have a secretary, usher, and trainbearer, to be from time to time appointed and removed by him at his pleasure; and the secretaries, registrars, and other officers appointed to attend the Lord Chancellor shall attend such Vice-Chancellor when sitting for the Lord Chancellor, and also when sitting in his separate Court or in Chambers, as circumstances shall require, and as the Lord Chancellor shall order and direct.

55. The salary of such Vice-Chancellor, and the salaries of his secretary, usher, and trainbearer, shall be of the same amounts, and paid out of the same funds, and in like manner, as the salaries of the said Sir George James Turner, his secretary, usher, and trainbearer, respectively, shall be payable at or immediately before his death, resignation, or removal from office.

56. It shall be lawful for her Majesty, by Letters Patent under the Great Seal of the United Kingdom, to grant to any person executing the office of Vice-Chancellor in pursuance of this Act, on his resignation of or his ceasing to execute his office, an annuity of the same amount, after the same period of service, under the same circumstances, subject to the same conditions, and payable out of the same fund, as the annuity authorised to be granted to each of the Vice-Chancellors appointed under the said Act of the 5 Vict. c. 5.

57. It shall be lawful for the Lord Chancellor to appoint one or more person or persons, removable at pleasure, for the purpose of keeping order in the Court of the Vice-Chancellor to be appointed under this Act; and the salary of the person or persons appointed or to be appointed, under this Act or under any Act or Acts now in force, to keep order in the Court of the Vice-Chancellor to be appointed under the authority of this Act, shall be of such amount, not exceeding the yearly sum of 80*l.*, as the Lord Chancellor may think reasonable; and such salary shall be paid to each such person so to be appointed, out of the same funds, and at the same time, and in like manner as the salaries of like persons have heretofore been paid.

58. Nothing herein contained shall in anywise prejudice or affect the title of the present Master in Ordinary of the said Court to the salaries payable to them as such Masters unless and until they shall be respectively released under this Act, or the power of the Lord Chancellor to order a retiring allowance to any of them or any of their clerks who may be or become afflicted with some permanent infirmity disabling him from the due execution of his office, and who shall be desirous of resigning the same; and every of the present Masters in Ordinary of the said Court, until released under this Act, shall have the same establishment of

clerks, whose salaries and compensations shall be payable out of the same funds as the salaries and compensations of their clerks are now payable; and all the expenses attending the establishment of the Masters Offices shall be paid in like manner as such expenses are now paid.

59. Nothing herein contained shall prejudice or affect the rights, duties, or privileges of the Accountant-General of the said Court of Chancery as a Master in Ordinary of the said Court, or any salary or other payment payable to the said Accountant-General as such Master in Ordinary, or his right or title to any retiring allowance under any Act or Acts of Parliament now in force, nor shall the said Accountant-General be called upon or required to do or perform any duties or services as such Master in Ordinary, other than such as are now usually performed by him.

60. Whereas it has frequently happened that after cases have been fully heard by the Lord Chancellor in the Court of Chancery and are standing for Judgment, the Lord Chancellor has delivered up the Great Seal without being able, by reason of other urgent public business, to deliver judgment therein, and much inconvenience and expense to the parties has been thereby occasioned:

For remedy thereof be it enacted, That in every such case in shall be lawful for the person who has so delivered up the Great Seal, within six weeks after he shall have delivered up the same, to give in to the registrar of the said Court a written judgment therein, signed by him; and a decree or order, as the case may require, shall be drawn up in pursuance of such judgment; and every such decree or order shall have the same force and effect as if the judgment in pursuance whereof it is drawn up had been given in open Court the day before he shall have so delivered up the Great Seal.

61. In the construction of this Act the expression "Her Majesty" shall mean the Sovereign for the time being: and the expression "Lord Chancellor" shall mean also and include the Lord Chancellor, Lord Keeper and Lords Commissioners for the custody of the Great Seal of the United Kingdom for the time being.

CLOSING OF ACCOUNTANT-GENERAL'S OFFICE.

By an order of the Lord Chancellor, dated the 12th July, the books of the Accountant-General will be closed from and after *Thursday, 19th August*, to *Thursday, 28th October*, next, inclusive. No purchase, sale, or transfer can be made, unless the order, request, or registrar's certificate be left on or before *12th August*, nor order for payment out of Court after *Saturday, August 14*.

NON-PAYMENT OF PREMIUM OF INSURANCE.

SOLICITORS employed in money transactions are often intrusted with the payment of premiums of insurance on policies effected for securing debts, or called upon to ascertain that such premiums have been paid in due time. In the following case, which has just been reported, it will be seen that the neglect for a few days only beyond the time, operated as a forfeiture. The facts were as follow:—

Mr. Winthrop was indebted to Mr. Murray and executed a warrant of attorney by way of security for the debt, a policy of insurance was effected on the debtor's life in the Hand-in-Hand Insurance Office; and it was agreed that judgment should not be entered up, unless default were made in payment of the premiums of insurance; and that, so long as the policy should be kept on foot, payment of the debt should not be required. It was provided, that if the debtor should omit to pay the premium for 10 days after it became due, the creditor should be at liberty to make such payment, and recover the amount against the debtor. The premium was payable on the 24th of June, and notice was sent by the office to the insurer, but it did not appear to have been communicated by him to the creditor. The 30 days allowed by the insurance office for the payment beyond the 24th of June expired on the 23rd of July. On the 27th of July, Murray (who was one of the directors of the insurance office) found that the premium had not been paid; and he then procured the office to accept the payment of the premium by himself, and thus to revive the policy, notwithstanding the four days delay which had occurred. Murray then proceeded to enforce the warrant of attorney, and a bill was filed by Winthrop to restrain him from issuing execution.

The Vice-Chancellor, after adverting to the cases in which the Court had refused to relieve against breach of covenant,¹ said, that if the object of the contract was, that the defendant Murray should be protected by an uninterrupted insurance, (as he was of opinion that it was,) the Court would not relieve against a breach of that contract. The question then was, whether Mr. Murray had had, according to the terms of the contract, such uninterrupted protection by the continued preservation of the interest in the policy. It appeared that four

days had elapsed after the time for payment of the premium had expired, and during which time the insurance company was under no obligation to continue the policy on foot. Mr. Murray was not bound to continue the plaintiff as his debtor under the contract any longer than the plaintiff protected him by keeping up the policy. When this had ceased to be done, the defendant was at liberty to sue out execution. Had the defendant lost this right by paying the premium himself, and procuring the policy to be revived? He was of opinion that he had not; and that the circumstance that the defendant was a director of the insurance company did not alter the case.

Bill dismissed with costs. *Winthrop v. Murray*, 8 Hare, 214.

LAWYERS IN THE NEW PARLIAMENT.

We last week gave a list of all the Candidates for the new Parliament, so far as the names were then known. We have now to record the result of the elections to the present time, showing the Members actually returned as representatives for the following places:—

- Aghionby, Henry Aghionby, *Cockermouth*.
- Armstrong, Rt. Baynes, Q. C., *Leicester*.
- ♦Atherton, William, Q. C., *Durham (City)*.
- Baines, Rt. Hon. Matthew Talbot, Q. C., *Leeds*.
- Barrow, Wm. Hodgson, *Nottinghamshire (S)*.
- Benbow, John, *Dudley*.
- ♦Bethell, Richard, Q. C., *Aylesbury*.
- Bremridge, Richard, *Barnstaple*.
- Brockman, Edward Drake, *Hythe*.
- Butt, George Medd, Q. C., *Weymouth*.
- Oakwell, Benjamin Bond, *Boston*.
- Chambers, Montagu, Q. C., *Greenwich*.
- Cobbett, James Paul, *Oldham*.
- Cobbold, John Chevallier, *Ipswich*.
- ♦Cockburn, Sir Alexander James Edmund, Q. C., *Southampton*.
- Collier, Robert P., *Plymouth*.
- Coles, Henry Beaumont, *Andover*.
- ♦Crowder, Richard Budden, Q. C., *Lisheard*.
- Ewart, William, *Dumfries (District)*.
- Fitzgerald, John D., Q. C., *Ennis*.
- Follett, B. Spencer, Q. C., *Bridgewater*.
- Freshfield, J. W., *Pearyn and Falmouth*.
- Gower, Hon. F. Leveson, *Stoke-on-Trent*.
- Granger, Thos. Colpitts, Q. C., *Durham (City)*.
- Grogan, Edward, *Dublin (City)*.
- Hayter, Right Hon. Wm. Goodenough, Q. C., *Wells*.
- Headlam, Thomas Emerson, *Newcastle-upon-Tyne*.
- Hildyard, Robert Charles, Q. C., *Whitehaven*.
- Hogg, Sir James Weir, Bart., *Honiton*.
- Ingham, R., Q. C., *South Shields*.
- Inglis, Sir Robert Harry, Bart., *Oxford (University)*.
- ♦Keating, H. S., Q. C., *Reading*;

¹ See *Doe d. Pittman v. Sutton*, 9 Car. & P. 706.

*Kelly, Sir Fitzroy, *Suffolk (East)*.
 *Laslett, Wm., *Worcester*.
 *Layard, Henry Austen, D.C.L., *Aylesbury*.
 Lefevre, Right Hon. Charles Shaw, *Hants (North)*.
 Locke, J., junior, *Hastings*.
 Lowe, Robert, *Kidderminster*.
 Macaulay, Kenneth, Q. C. *Cambridge (Borough)*.
 Macaulay, Rt. Hon. T. B., *Edinburgh (City)*.
 Malins, Richard, Q. C., *Wallingford*.
 Moncreiff, Rt. Hon. James, *Leith*.
 *Mullings, Joseph Randolph, *Gloucester*.
 Murphy, Francis Slade, S. L., *Cork (City)*.
 *Morough, John Patrick, *Bridport*.
 *Needle, Joseph, *Chippenham*.
 Paull, Henry, *St. Ives*.
 Peel, Frederick, *Bury (Lancashire)*.
 Phillimore, J. G., Q. C., *Cheltenham*.
 Phinn, Thomas, *Bath*.
 Pugh, David, *Montgomery (District)*.
 Roebuck, John Arthur, Q. C., *Sheffield*.
 *Sadler, John, *Carlton (Borough)*.
 Seymour, William Digby, *Sunderland*.
 Stuart, John, Q. C., *Bury St. Edmunds*.
 Tancred, Henry William, Q. C., *Banbury*.
 *Thesiger, Sir Frederick, *Stamford*.
 Villiers, Hon. C. P., *Wolverhampton*.
 Vivian, John Ennis, *Truro*.
 Walpole, Rt. Hon. Spencer Horatio, Q. C., *Midhurst*.
 Whiteside, Right Hon. James, Q. C., *Ennis-killen*.
 *Wigram, Loftus Tottenham, Q. C., *Cambridge (University)*.
 *Wood, Sir William Page, *Oxford (City)*.
 Wortley, Rt. Hon. James Archibald Stuart, Q. C., *Bute-shire*.

The Members marked thus (*), are or have been solicitors. See *Postscript*.

SELECTIONS FROM CORRESPONDENCE.

ENGLISH INSTRUMENTS SENT ABROAD.

I HAVE been informed that a written instrument prepared in England and sent to be used (as evidence?) in a foreign Court requires to be written on one sheet of paper (stitching not being allowed); and that any clerical errors it contains must be verified by a magistrate or other officer of the law.

Will you, or any of your readers, favour me by stating the rule applicable in this case,—referring to an authority,—by saying whether the sheets of any such instrument may be poeted together or not, and by naming the country or countries to which the rule applies?

7th July, 1852.

J. L.

INTEREST ON PURCHASE-MONEY.

By a contract in writing it is agreed that interest shall be paid on the purchase-money until the actual payment thereof.

On the 1st of June the engrossment is sent to the vendor's solicitors with an intimation that

the purchase-money was ready, and some three weeks elapses before the execution of the deed.

Is the purchaser bound to pay interest subsequent to the 1st of June, and up to the time of completion? R.

USAGES OF THE PROFESSION.

EXECUTION OF CONVEYANCES.

I SHALL be obliged by being favoured with the opinion of some of your readers on the point, whether the solicitor for the purchaser is or is not entitled, *of right*, to attest the execution of a conveyance by a vendor, and that whether he particularly requests to be present at its execution or not?

Or, is the solicitor for a vendor justified in procuring the execution by his client, in the absence of the purchaser's solicitor, especially as he had previously thereto requested to be present and attest its execution?

And, is there any case or dictum referable thereto? CIVIS.

NOTES OF THE WEEK.

NEW RECORD REPOSITORY.

By the 13th Report of the Deputy Keeper of the Public Records, just printed, it appears that the first block or portion of the New Repository of Records, now in rapid progress on the Rolls Garden, will be roofed in before the conclusion of the present year.

This building will comprise not merely the records in a legal or historical sense, but all public documents and archives whatever.

LAW PROMOTIONS AND APPOINTMENTS.

Ralph Thomas, Esq., of the Oxford Circuit, who was called to the Bar of the Middle Temple on May 6, 1831, and Richard Matthews, Esq., of the Northern Circuit, called to the Bar by the same Honourable Society, on April 25, 1838, have been promoted to the degree of the Coif.

LECTURERS AT THE INCORPORATED LAW SOCIETY.

J. C. Conybeare, Esq., has been elected Lecturer for the ensuing year on Equity and Bankruptcy; Richard Garth, Esq., on Common Law and Criminal Law; and Reginald Walpole, Esq., on Conveyancing.

MASTERS IN CHANCERY ABOLITION ACT.—COMPENSATION TO JUNIOR CLERKS OF RETIRING MASTERS.

It appears that a petition was presented to the Lord Chancellor on behalf of the junior clerks of the Masters who retire under the Act 15 & 16 Vict. c. 80, seeking compensation for the diminution by the loss of the fees between their present emoluments and the amount of their retiring allowances. His Lordship dismissed the petition with costs.

RECENT DECISIONS IN THE SUPERIOR COURTS.

AND SHORT NOTES OF CASES.

Lord Chancellor.

Dunckley v. Dunckley. July 9, 10, 1852.

APPEAL FROM CLAIM.—DEPOSIT.—RIGHT TO BEGIN WHEN FROM WHOLE ORDER.—HUSBAND AND WIFE.—EQUITY TO SETTLEMENT.

Held, that a deposit must in future be paid on an appeal from a claim.

Held, also, that the right to begin on an appeal against the whole of the order upon a claim follows the ordinary course of an appeal from a decree in a suit, and that the plaintiff is entitled to begin.

Held, dismissing with costs, an appeal from Vice-Chancellor Knight Bruce, that a married woman, who had been separated from her husband by a decree, a mensa et thoro, and had not received anything from him towards her support since such decree, was entitled to have settled on herself and children, as against the assignees of her husband, who had become bankrupt, the whole of a sum of 1,000*l.*, which came through her relations.

It appeared in this case, which was an appeal from an order of Vice-Chancellor Knight Bruce on a claim, that the plaintiff had obtained a decree for a divorce from her husband, on the ground of adultery, but without alimony, and that a sum of 1,000*l.*, which formed part of her father's estate, had fallen into possession on the death of a tenant for life. The husband having become a bankrupt, his assignees claimed the fund. The Vice-Chancellor Knight Bruce having made an order for a settlement on the wife and her family against the assignees, upon it appearing he had not contributed since the divorce to the support of the wife and children, this appeal was presented.

Bethell and *Leach* for the plaintiff, were ruled to begin—the appeal being from the whole order.

Schomberg and *Barton* for the assignees and appellants.

Gardner v. Marshall, 14 Sim. 575; *Ball v. Montgomery*, 2 Ves. J. 191; 4 Bro. C. C. 339; *Napier v. Napier*, 1 Dru. & W. 407; *Scott v. Spashett*, 3 M. & G. 599, were cited, and see *In re Cutler*, 14 Beav. 220.

The Lord Chancellor, after having directed that in future a deposit must be paid on an appeal from a claim, said, that the Court had a discretion which, under such circumstances as the present, as the husband had not contributed anything for a series of years towards the support of his wife and family, it would exercise in favour of the wife and her family, and the appeal was therefore dismissed with costs.

July 7.—*In re Southampton Charities*—Stand over, to allow trustees opportunity of resigning.

July 7.—*Seagrave v. Pope*—Order for rehearing.

— 7.—*In re Rugby, Warwick, and Worcester Railway Company, ex parte Preece and another*—On appeal from Vice-Chancellor Knight Bruce, Master's order varied.

— 7, 8.—*In re Bank of Australia, ex parte Meuz's executors*—Judgment of the Vice-Chancellor Knight Bruce affirmed, without costs.

— 8.—*In re Same, ex parte Robinson*—The like.

— 8, 9.—*In re St. James' Club, ex parte Greenway*—Appeal allowed from Vice-Chancellor Knight Bruce, without costs.

— 9.—*Kemp v. Sober*—Appeal from Vice-Chancellor Lord Cranworth dismissed, with costs.

— 9.—*Walter v. Selfe*—Appeal from Vice-Chancellor Knight Bruce dismissed, with costs.

— 10.—*Kekewich v. Marker*—Stand over.

— 10.—*In re Cophett*—Application for habeas corpus refused.

— 12.—*Stronghill v. Anstey*—Appeal from Vice-Chancellor Knight Bruce allowed.

— 12.—*In re Exeter Charities*—Stand over.

— 12.—*In re Payne*—Assignees directed to make affidavit upon insolvent's refusal to do so as required for payment of compensation as retired Commissioner of Bankrupt.

— 12.—*In re Bahnertman*—Order for vesting stock in other trustees, where one was a lunatic.

— 12.—*In re Suitors' Fund*—Petition of junior clerks to retiring Masters dismissed, with costs.

— 13.—*Jones v. Price*—Part heard.

Lords Justices.

July 7.—*Hartwell v. Colvin*—Appeal from Master of the Rolls dismissed, with costs.

— 9.—*Lord Ward v. Oxford, Worcester and Wolverhampton Railway Company*—Stand over.

— 8, 10.—*Ex parte Dufaur, in re Dufaur*—Adjudication set aside, without costs.

— 9, 10.—*Ex parte Gull, in re Gull*—Appeal from Commissioner allowed and order for first-class certificate.

— 9, 10.—*Kensit v. Stratford*—Cur. ad. vult.

Master of the Rolls.

July 9.—*Earl Lindsay v. Great Northern Railway Company*—Injunction granted.

— 9.—*Winniett v. Chard*—Injunction granted.

— 9.—*Sargent v. Fremont*—Order for production of documents, &c.

July 9.—*Pelly v. Clarke*—Exceptions allowed to Master's report.

— 12.—*Shrewsbury and Birmingham Railway Company v. London and North Western Railway Company*—Stand over.

— 9, 12, 13.—*Wilson v. Eden*—Bill dismissed.

— 13.—*Ellis v. Elliott*—*Cur. ad. vult.*

— 13.—*In re London Dock Company, ex parte Hyde and others*—Part heard.

Vice-Chancellor Turner.

Kinnerley v. Kinnerley. July 3, 1852.

WILL.—CONSTRUCTION.—POWER TO APPOINT TO CHILDREN.—GRANDCHILDREN.

A testator gave to his wife the whole of his real and personal property to bring up and educate his children, and when they should come of age to settle on them what should be deemed by her prudent, reserving to herself sufficient maintenance. There was a provision for the appointment of a trustee, if his wife should marry again, and a direction that the property remaining at the death of his wife should be equally divided among his children: Held, that an appointment to one of the daughters for life, and after her death to her children, was bad so far as related to such grandchildren.

THE testator in this cause gave to his wife the whole of his estate, personal and real, to bring up and educate his children, and when they should come of age to settle on them what should be deemed by her prudent, reserving to herself a sufficient maintenance. And the testator further directed that if his wife should again marry, his friend Mr. Wm. Page should be trustee for his children, so that his property might not be subject to the control of such husband; and also that the property remaining at his wife's death should be equally divided among his children. It appeared the wife made an appointment under this will of a share to a daughter for life, and after her death to her children. The question was, whether the appointment to such grandchildren was within the power.

Sir W. Page Wood, Anderson, Schomberg, and Hughes appeared for the several parties.

The Vice Chancellor said, the trust under the will was to educate and maintain the children, and to appoint to them only, and not to grandchildren; and that the appointment in favour of the latter was therefore bad.

July 8.—*Cole v. Miles*—Bill dismissed, with costs.

— 10.—*Grieves v. Rawley*—*Cur. ad. vult.*

— 12.—*Viscount Barrington v. Liddell*—Judgment on special case under 14 & 15 Vict. c. 35.

— 13.—*O'Brien v. Osborne*—Stand over.

Vice-Chancellor Kindersley.

Gibson v. Gibson. March 15; June 12, 1852.

WILL.—CONSTRUCTION.—REQUEST TO WIDOW.—RIGHT OF DOWER.—ELECTION.

A testator by his will gave specific chattels and leasehold premises to his wife absolutely, and then devised to trustees all his freehold messuages, &c., and all the rest and residue of his leasehold property in trust to pay one-fourth to his wife and the three other 4th parts as therein directed: Held, that inasmuch as the exercise of the wife's right to dower would not defeat any part of the will, she was not put to her election between such right and the benefits under the will.

THE testator, Mr. Gibson, by his will, after giving certain specific chattels and leasehold premises to his wife absolutely, devised all his freehold messuages, lands and tenements and all the rest and residue of his leasehold messuages, tenements, and premises, to trustees in trust to sell the same and stand possessed of the proceeds, after paying certain legacies, in trust as to one-fourth for his wife absolutely, as to one other fourth for his sister and her children, and as to the other two-fourths for the parties therein mentioned. The question for decision was, whether the widow was put to her election between her right of dower in the testator's estates devised in trust for sale, and the benefits accruing to her under the will.

Bethell and Rogers for the plaintiff; Walker and Bagallay for other parties; Holt and F. S. Williams for the defendants.

Cur. ad. vult.

The Vice-Chancellor said, the doctrine of election was the same in regard to dower as to any other case, and that the person who was entitled under a will to a bequest must abandon any interest which would defeat any gift before he could claim thereunder, and hence the widow could not claim dower, if that claim would defeat any portion of the will. As that, however was not the case here, and it was clear from the authorities that the trust for sale was not inconsistent with her claim: *Chalmers v. Staril*, 2 V. & B. 222; *Ellis v. Lewis*, 3 Hare, 310; and there was no intention expressed by the testator to exclude his widow from dower, a declaration must be made that she was not put to her election.

July 8.—*Harvey v. Stracey*—Judgment in favour of validity of appointment.

— 8.—*In re Park Club Mutual Loan Society*—Petition for winding up company dismissed with costs.

— 9.—*In re Waring's Settlement*—Marriage settlement held void.

— 13.—*In re Bilston Curacy*—Order for payment of instalments into Court.

— 13.—*Harvey v. Stracey*—Part heard.

¹ See *Lawrence v. Lawrence*, 2 Vern. 365; 2 Freem. 234, 235; 3 Bro. P. C. 483; *Lemon v. Lemon*, 8 Vin. Abr. "Devise," p. 366, pl. 45; *French v. Davies*, 2 Ves. J. 572; *Strahan v. Sutton*, 3 Ves. 249; *Lord Dorchester v. Earl of Eglingham*, Coop. 319; *Brown v. Parry*, 2 Dick. 685; *Inclendon v. Northcote*, 3 Atk. 430, 436.

Vice-Chancellor Parker.

July 7.—*In re Direct, Exeter, Plymouth, and Devonport Railway Company, ex parte Hall*—Order as to costs.

— 7.—*Middleton v. Middleton*—Judgment on fur. dirs.

— 9.—*Harrison v. Brown and others*—Demurrer to bill allowed, without costs, and with leave to amend.

— 10.—*In re Tinkler's Trust Estate*—Order for payment of arrears of annuity out of proceeds of sale of estate.

— 12.—*Travill v. Bull*—Part heard.

— 13.—*Waters v. Wood*—Judgment as to construction of will.

Court of Queen's Bench.

Lloyd v. Oliver. May 4, 1852.

BILL OF EXCHANGE.—INDORSEE AGAINST DRAWEE AND ACCEPTOR — PROMISSORY NOTE.

An action was brought on the following instrument:—"Two months after date, I promise to pay F. R. L., or order, the sum of 99l. 15s., for value received. Henry O. To John Edward O., Birmingham." And it was indorsed—"Accepted. Payable at Attwood & Co's. John Edward O.:" Held, that it might be sued on by an indorsee as a bill of exchange or a promissory note as against Henry O., the drawer, and as a bill of exchange as against John Edward O., the drawee and acceptor.

This was a motion for a rule nisi for a new trial on the ground of misdirection in this action which was brought against the acceptor by the indorsee of a bill of exchange, and to which the defendant pleaded non-acceptance. It appeared that the instrument was as follows:—

"London, July, 1851. Two months after date, I promise to pay Mr. F. R. Lloyd, or order, the sum of 99l. 15s. for value received. Henry Oliver. To John Edward Oliver, Birmingham." And it was indorsed—"Accepted. Payable at Attwood & Co's. John Edward Oliver."

On the trial before *Erle, J.*, at Westminster, on 29th April last, the plaintiff obtained a verdict.

Gray, in support, contended the instrument was a promissory note, and not a bill of exchange.

The Court held, that as against the drawer the instrument might be treated either as a promissory note or as a bill of exchange, and as a bill of exchange against the drawee and acceptor. The rule was therefore refused.

Common Pleas.

Novello v. Sadlow. April 22, 27; May 7, 1852.

COPYRIGHT ACT.—MULTIPLYING COPIES OF

MUSICAL WORK FOR GRATUITOUS DISTRIBUTION.

Held, on special case, that the multiplying of copies of a musical work for gratuitous distribution is an infringement of copyright under the 5 & 6 Vict. c. 45, for which the owner of the copyright is entitled to recover damages.

This was a special case for the opinion of this Court. The action was brought to recover damages for the infringement of the plaintiff's copyright in one of Benedict's part songs called *The Wreath* by the defendant, who was one of the committee of the Liverpool Philharmonic Society. It appeared that upon that society proposing to perform the song in question, the defendant had 235 lithographic copies taken off of the work, and distributed them gratuitously among the members.

Phipson, for the plaintiff, cited *Miller v. Taylor*, 4 Burr. 2,303; and referred to s. 15 of the 5 & 6 Vict. c. 45, and to the interpretation clauses, which defined "copyright" to mean "the sole and exclusive liberty of printing or otherwise multiplying copies of any work to which the said word is herein applied."

Willes, for the defendant, cited *Boosey v. Jeffries*, 6 Exch. R. 580.

Cur. ad. vult.

The Court held, that the multiplying copies for gratuitous distribution by the defendant was an infringement of the plaintiff's copyright, and that he was therefore entitled to recover.

Judges' Chambers.

(*Coram Crompton, J.*)

Doe dem. King v. Holmes. July 7, 1852.

INSPECTION OF DOCUMENTS.—14 & 15 VICT. c. 99.

The lessor of the plaintiff in an action of ejectment is, even before joining in the Consent Rule, a "litigant" within the meaning of sect. 6 of the Evidence Act, the 14 & 15 Vict. c. 99, but the Judge, at the request of the defendant on the hearing of the application for inspection and copy of a document alleged to be in the defendant's possession, will make the attorney of the lessor of the plaintiff undertake to join issue and consequently also join in the consent rule.

This was a summons taken out by the lessor of the plaintiff calling on the defendant to show cause why the lessor of the plaintiff should not be at liberty to inspect and take an examined copy of the marriage settlement of a party under whom the lessor of the plaintiff claimed to be entitled.

Mr. W. Hemings, counsel for the defendant objected that the lessor of the plaintiff was not a "litigant" within the meaning of the Evidence Act, inasmuch as he had not joined in the consent rule, and, until the lessor of the

plaintiff does that, he is not a party to the cause, so as to be made liable to pay costs, &c.

The learned Judge held that the lessor of the plaintiff was a "litigant" within the meaning of the 6th section of the Evidence Act, but added that the plaintiff's attorney must undertake to join in the consent rule.

The summons was eventually dismissed on the merits, and the Judge indorsed on the summons (to be embodied in an order) an undertaking on the part of the attorney of the lessor of the plaintiff that he would join in the consent rule. This was done to enable the defendant to obtain his costs.

ANALYTICAL DIGEST OF CASES,

REPORTED IN ALL THE COURTS.

Courts of Equity.

[For the previous Sections of the Digest in this Volume, see

Privy Council: Appeals, p. 17.

House of Lords: Appeals, p. 38.]

Courts of Equity:

Construction of Statutes, p. 104.

Law of Attorneys and Solicitors, p. 126.

Contributories under the Winding-up Act, p. 143.

Law of Trustees, p. 165.

Lunacy, p. 185.

Law relating to Infants, p. 186.

Law relating to Charities, p. 203.]

APPEALS IN BANKRUPTCY.

ACT OF BANKRUPTCY.

1. *Declaration of insolvency.*—Fiat after two months.—A declaration of insolvency followed by a fiat within two months, held to be an act of bankruptcy sufficient to support another fiat issued after that period, on the annulling of the former fiat. *Ex parte Hunt, in re Bussit*, 3 De G. & S. 572.

2. *Failure to pay or secure.*—Fiat after two months.—A fiat was sued out, founded on an omission to pay or secure a debt according to the 1 & 2 Vict. c. 110, s. 8, which enacts, that such omission shall constitute an act of bankruptcy, provided a fiat shall issue within two months after the default. The fiat was not sued out by the creditor who made the affidavit of debt, and was afterwards annulled for want of prosecution. A second fiat then issued after the expiration of two months; Held, that the failure to pay, &c., constituted a sufficient act of bankruptcy to support the second fiat. *Ex parte Parker, in re Parker*, 3 De G. & S. 575.

3. *Absenting.*—A trader, on a dissolution of partnership, left at the place of business a direction, that letters were to be addressed to him at a particular post-office, at a shop.

The continuing partner afterwards instructed a solicitor to call a meeting of creditors, and the solicitor notified this to the retired partner, who neither sanctioned the meeting nor attended it: Held, that neither of these omissions constituted an act of bankruptcy. *Ex parte Addison, in re Hooper*, 3 De G. & S. 580.

ADJUDICATION.

Bankrupt Law Consolidation Act, 1849.—

Reviewing adjudication.—Jurisdiction of Commissioner.—Where a bankrupt does not contest the validity of an adjudication of his bankruptcy before a Commissioner within the period prescribed by the 104th section of the Act 12 & 13 Vict. c. 106, for showing cause against such adjudication, the Commissioner has, after that period, no authority to entertain an application to review the adjudication, either under that section, or under the 233rd section. *Ex parte Carter, in re Carter*, 1 De G., M'N. & G. 212.

AMENDING AFFIDAVITS.

Where a petition, and the affidavits in support of it, had been wrongly intitled, and the petition had been amended under an order, the Court allowed the affidavits to be taken off the file to be amended. *Ex parte Burton, in re Ford*, and *in re Harvey*, 3 De G. & S. 578.

ANNULLING FIAT.

1. On a petition presented by the bankrupt, with the consent of his creditors, to the Lord Chancellor, seeking to annul the fiat issued against him previously to the passing of the Bankrupt Law Consolidation Act, the Lord Chancellor granted the order to annul the fiat, but on the express grounds of there being proceedings pending. *In re Harwood*, 1 H. & T. 572.

2. *Special petition to annul for want of prosecution not required because petitioner abroad.*—The circumstance of a person against whom a fiat has issued being abroad, does not justify a special petition to annul for want of prosecution, as an ex parte application may be made to dispense with his signature. *Ex parte Ward, in re Ward*, 3 De G. & S. 579.

3. *Costs.*—An order annulling, with costs, a fiat issued against the petitioner, will not be extended to the costs occasioned to him by the issuing of the fiat, other than those of the proceedings under it. *Ex parte Ward, in re Ward*, 3 De G. & S. 580.

4. *Amending petition to annul does not take it out of statutory period.*—A petition of one of the bankrupts to annul the fiat was wrongly intitled: Held, that the Court might, after the expiration of 21 days from the insertion of the advertisement, permit the title to be amended, and the petition to be served on the other bankrupt, and that these steps did not render the amended petition a new proceeding, so as

to be precluded by the lapse of the 21 days. *Esparie Lord, in re Lord*, 3 De G. & S. 607.

ARRANGEMENT WITH CREDITORS.

1. 7 & 8 Vict. c. 70, s. 8.—*Construction.—Vesting order.—Trustee.*—The 8th section of the Stat. 7 & 8 Vict. c. 70, “for Facilitating Arrangements between Debtors and Creditors,” which enacts, that upon the filing of the resolution and agreement therein-mentioned, all the estate and effects of the petitioning debtor shall vest in the trustee (if any be appointed) as fully as if such trustee were an assignee in bankruptcy,—has not necessarily the effect of vesting in the trustee all the estate and effects of the petitioning debtor, but vests only so much of such estate and effects as the debtor may give up and the creditors accept, or that part of the estate and effects in respect of which the trustee is appointed. *Robins v. Hobbs*, 9 Hare, 122.

2. *Meeting of creditors.—Power to accept or reject, but not to vary agreement.*—The second meeting of creditors convened under the 4th section of the 7 & 8 Vict. c. 70, may accept or reject, but cannot vary, the terms of the agreement assented to by the first meeting: *Semble. Robins v. Hobbs*, 9 Hare, 122.

BILL OF SALE.

In January, 1848, A. gave B. a bill of sale of his household furniture, to secure a debt due from him to B. On the 21st February, 1849, B. took possession of the furniture, and advertised it for sale. On the 8th of March following, a petition presented by A., under the Insolvent Debtors' Act, for protection from process was filed.

The Vice-Chancellor held that, though the bill of sale was unaffected, yet B.'s right to retain possession of the furniture was departed.

The Lord Chancellor, on appeal, directed B. to bring an action to try his right to the furniture. *Parrott v. Congreve*, 16 Sim. 579.

BILL BY ASSIGNEE IN INSOLVENCY.

Creditors' consent.—A bill by an assignee in insolvency need not allege that the consent of the creditors has been obtained to the institution of the suit. *Spooner v. Payne*, 2 De G. & S. 439.

CERTIFICATE.

1. *Bankrupt Law Consolidation Act, 1849.—Construction.—Refusal of certificate.—Reviewing decision of Commissioner.*—A proceeding to review the decision of a Commissioner who has refused a certificate under the 39th section of the Act 5 & 6 Vict. c. 122, is not a proceeding for the continuance of which provision is made by the 4th section of the Act 12 & 13 Vict. c. 106, and such proceeding cannot be instituted, except on one of the grounds specified in the 207th section of the latter statute.

The expression in the 4th section, that nothing in the Act is “to lessen or affect any right, title,” &c., of a person by virtue of proceedings under then existing bankruptcies, has

reference only to the continuance and completion of proceedings affecting the administration of a bankrupt's estate.

In 1847, the Commissioner refused the allowance of a bankrupt's certificate under the 39th section of the Act 5 & 6 Vict. c. 122; in 1851, after the death of the Commissioner, the bankrupt applied to his successor with the view of having the matter reheard, alleging that the statement of the opposing creditor on the occasion of the refusal was partial and imperfect: *Held*, that the application could only be made under the provisions of the 207th section of the Act 12 & 13 Vict. c. 106; and that inasmuch as the refusal of the certificate was not obtained by false evidence or improper suppression of evidence or by fraud, the original decision could not be reviewed. *Esparie Higginson, in re Higginson*, 1 De G., M'N., & G. 204.

2. 12 & 13 Vict. c. 106.—*Construction of 198th section.—Adjourning meeting for granting certificate.*—*Held*, that under the 198th section of the Bankrupt Law Consolidation Act, 12 & 13 Vict. c. 106, which provides, that forthwith after the bankrupt shall have passed his last examination, the Court shall appoint a public sitting for the allowance of his certificate, at which sitting the assignees, or any creditor, having given three clear days' notice, may be heard in opposition to such certificate, the Commissioner was justified in adjourning such meeting on the application of a creditor desirous of opposing the granting of the certificate but who had failed to give the three days' notice. *In re Woods*, 3 M'N. & G. 269.

3. *Conduct as a trader.—Scrivener.*—An attorney employed to receive money and pay it to the client's account paid it to his own, and, on the client bringing an action, vexatiously defended it, and filed a bill (which was dismissed) to restrain execution. He was afterwards found bankrupt as a scrivener: *Held*, that the conduct of the bankrupt was not conduct as a scrivener, so as to be capable of being regarded in reference to the allowance of his certificate. *Esparie Spicer, in re Mathias*, 3 De G. & S. 601.

4. *Bankrupt Law Consolidation, 1849.—Construction of the 256th, 257th, and 259th sections.—Judgment certificate.*—The Commissioner may, on the occasion referred to in the 256th section of the Bankrupt Law Consolidation Act, 1849, (12 & 13 Vict. c. 106,) refuse to grant the bankrupt further protection on other grounds than for one of the offences specified in that section.

The term “further protection” in the 257th section is not exclusively referable to cases in which further protection has been refused, on account of the commission of any of the offences specified in the 256th section; and the certificate in the form contained in the schedule B. a. to the act, and mentioned in the 257th section, may be granted where further protection has been refused on other grounds than for one of the offences enumerated in the 256th section.

The words "this enactment," in the 259th section, are not referable to the whole act, but to that particular section only. *Esparte Stanton, in re Stanton*, 1 De G., M'N. & G. 224.

DEFENDANT IN SUIT.

Answer. — Sufficiency. — A defendant, who became bankrupt after the bill was filed, put in an answer, (without having obtained any order for further time,) merely stating the bankruptcy, and not purporting to answer any interrogatory in the bill: *Held*, not a case for taking the answer off the file as evasive. *White v. Howard*, 2 De G. & S. 223.

JURISDICTION OF LORD CHANCELLOR.

In the case of a fiat issued previously to the Stat. 12 & 13 Vict. c. 106, and in which the proceedings had not been completed, the Lord Chancellor ordered the petitioning creditor's affidavit, and the petition for the fiat, to be produced for the purpose of being enrolled and sealed, with a view to their production on the trial of an action, in which the validity of the fiat was to be decided. *In re Bishop*, 2 H. & T. 220.

LIEN.

Bill of exchange. — Return proceeds. — A bill of exchange thus drawn: — "Pay C. & Co. 7,500*l.*, value of same, which place against coffee per Vigilant." *Held*, not sufficient to give a lien on the coffee for the amount of the bill. *Esparte Carruthers, in re Higginson*, 3 De G. & S. 570.

MORTGAGE.

1. *Order not granted where bankrupt not personally liable to pay.* — A mortgagee cannot have the usual order where the bankrupt is not the mortgagor but a purchaser of the equity of redemption, although the vendors of the equity of redemption, with whom the bankrupt has covenanted to pay the debt, join in the petition, and pray to be at liberty, after paying the deficiency, to prove for the amount. *Esparte Keightley, in re Stockdale*, 3 De G. & S. 583.

2. *Shares without memorandum. — Costs.* — Equitable mortgagee by deposit of shares in a public company without written memorandum, held entitled to his costs, on evidence of custom not to give written memorandum. *Esparte Moss, in re Davies*, 3 De G. & S. 599.

3. *Written memorandum. — Substitution of security.* — A loan was made on a deposit of agreements for building leases, with a written memorandum; afterwards the leases were obtained and deposited in lieu of the agreements, but without any fresh memorandum: *Held*, that, on the usual petition of the equitable mortgagee in bankruptcy, the order ought to be made as in cases of no written memorandum. *Esparte Anderson, in re Ash*, 3 De G. & S. 600.

PENSION OF COMMISSIONER OF BANKRUPT.

Passes to assignee in insolvency. — Refusal of assignee to make necessary affidavit to procure payment. — The annuity awarded as compensa-

tion to a Commissioner of Bankrupt, whose duties were abolished by the 5 & 6 Vict. c. 122, passes to his assignee on his insolvency.

But if the insolvent will not make the affidavit (required by the order for payment of the annuity) that he does not hold any office of emolument, &c., neither the Court nor the Lord Chancellor can dispense with it; and *semble*, that, in the existing state of the law, the assignee is without any remedy in such a case. *Spooner v. Payne*, 2 De G. & S. 439.

PROOF.

1. *Bond given in consideration of delivering up voluntary bond.* — A partner in a bank gave a bond to his sister in performance, as it was alleged, of a promise voluntarily made to their father on his death-bed. The sister died, having specifically bequeathed the sum secured by the bond. The bankrupt gave the legatees fresh bonds for sums amounting together to the sum secured by the original bond, in consideration of the delivery up of that instrument. Six years afterwards, the partners in the bank, including the obligor, became bankrupt; and it appeared that, at the times of both the transactions, the firm must have been insolvent, and that the obligor must have then known or suspected this to be the case; but that the transactions were entered into fairly, and without reference to this circumstance. There was no evidence, however, of any notice or suspicion on the part of the obligees: *Held*, that they were entitled to prove upon the bonds. *Esparte Hookins, in re Gundry*, 3 De G. & S. 549.

Case cited in the judgment: *Esparte Berry*, 19 Ves. 218.

2. *Annuity. — Enrolment.* — Documents of title were deposited, with a written memorandum expressing that they were deposited to secure an annuity, also secured by bond. The bond was enrolled, but not the memorandum. The Court declined to direct a sale of the property, comprised in the security. *Esparte Miller, in re Swann*, 3 De G. & S. 553.

3. *Contingent debt. — Instalments.* — A trader, upon his daughter's marriage, covenanted to pay, so long as the intended husband and wife, or any issue of the marriage, entitled under the provisions of the settlement, should live, such a sum as with the annual produce of any property which might be received as therein mentioned, would amount to 150*l.*: *Held*, that the payments of the annuity becoming due after the issuing of a fiat against the trader could not be proved. *Esparte Evans, in re Foster*, 3 De G. & S. 561.

4. *Contingent debt. — Covenant to pay premiums.* — A trader covenanted by an ante-nuptial settlement to pay the premiums on certain assigned policies of insurance on his life, or, if he failed to do so, to repay to the trustees the amount which they should pay in respect of the premiums: On his becoming bankrupt, *held*, that the trustees could not prove for the amount required by the offices to be paid to keep up the policies during the remainder of

the bankrupt's life. *In re Whitmore*, 3 De G. & S. 565.

Cases cited in the judgment: *Ex parte Tindall*, Mont. 462; *Ex parte Grundy*, Mont. & M. 293; *Ex parte Lancaster Canal Company*, Mont. 27; *Yallop v. Ebers*, 1 B. & Ad. 698; *Boorman v. Nash*, 9 B. & C. 145; *Ex parte Thompson*, Mont. & B. 219; *Atwood v. Partridge*, 4 Bing. 209; *Ex parte Marshall*, 1 Mont. & A. 118; 3 D. & C. 159; *La Coste v. Gilman*, 1 Price, 315; *Bennett v. Burton*, 12 A. & E. 657.

5. *Trustee.—Proof without giving up security.*—A partner in a bank drew out part of a balance standing to the account of trustees of a will, under which he was interested, without the authority of the trustees, and invested it upon a canal mortgage, which was an unauthorised security: *Held*, on the bankruptcy of the bankers, that the *cestui que trustent* were entitled to prove for the whole of the balance, without giving up the canal mortgage. *Ex parte Biddulph*, in *re Biddulph*; *Ex parte Barnewall*, 3 De G. & S. 587.

6. *Call under Winding-up Act.—Against separate estate.*—The amount of a call made upon a contributory under the Joint-Stock Companies' Winding-up Act, 1848, before his bankruptcy, may be proved against his separate estate by the official manager, although all the debts of the company are not paid for which the contributory is liable. *Ex parte Brown*, in *re Fenwick*, 3 De G. & S. 590.

7. *Call under Winding-up Act.—Previous consent of Master.*—Where the direction of the Master had not been obtained before a proof was tendered by the official manager under a bankruptcy, but no objection was made on this ground to the admission of the proof before the Commissioner, and the Court, on appeal, was satisfied that the proceeding was not disapproved of by the Master: *Held*, that it was not competent to the assignees to object, on appeal from the Commissioner's decision, that the Master's approbation had not been obtained before the proof was tendered. *Ex parte Brown*, in *re Fenwick*, 3 De G. & S. 590.

PROVISIONAL ASSIGNEE.

Plea of insolvency.—Co-defendant.—After bill filed for an account, and appearance entered by two of the defendants, who were in partnership as solicitors, one of them took the benefit of the Insolvent Debtors' Acts, and the provisional assignee of the Insolvent Debtors' Court was, by order of that Court, appointed the official assignee of his estate and effects. Plea filed to the bill, stating that fact, and that the provisional assignee ought to be made a party to the suit, was allowed. *Sergrove v. Mayhew*, 2 H. & T. 218; 2 M'N. & G. 97.

SPECIFIC PERFORMANCE.

Plea of subsequent bankruptcy.—To a bill for specific performance, a plea by a sole defendant of his bankruptcy subsequent to the bill filed was allowed. *Lane v. Smith*, 14 Beav. 49.

Cases cited in the judgment: *Sergrove v. May-*

hew, 2 M'N. & G. 97; 3 H. & T. 218; *Turner v. Robinson*, 1 Sim. & St. 4.

SURRENDER.

Petition to discharge order for surrender obtained by incorrect statement.—A bankrupt obtained an order for leave to surrender, and for his costs to be paid out of the estate, on a petition supported by his affidavit, stating that his surrender had been prevented by his having left England on account of family disagreements. The petition was unopposed. On appearing before the Commissioner to surrender, he was examined, and stated that he left England on account of his embarrassments. The assignees thereupon petitioned to have the former order discharged; but the Court refused to discharge it, holding that the circumstance would be properly regarded when the bankrupt applied for his certificate. *Ex parte Pennell*, in *re Turner*, 3 De G. & S. 555.

TRADER DEBTOR.

Bond.—Examination.—Semble, that the 79th section of the Bankrupt Law Consolidation Act, 1849, does not render it imperative upon the Commissioners to require a trader, summoned under that section, to enter into a bond.

Upon such a summons, if either the trader or the creditor tenders himself to be examined, his examination ought to be taken. But it is not incumbent on the Court to hear any other witness. *Ex parte Sheward*, in *re Sheward*, 3 De G. & S. 609.

TRADING.

Builder.—A barrister, who took leases of three pieces of ground, and built houses upon them for the purpose of letting—*Held* not to be a builder within the meaning of the Bankrupt Laws; but on it appearing that he had accepted a bill, addressed to him by the description of "builder," and had brought an action for slander, on the ground that the word complained of injured him as a trader, the fiat was annulled without costs. *Ex parte Stewart*, in *re Stewart*, 3 De G. & S. 557.

TRANSFER OF DEBENTURES IN COMPANY.

Entry in books.—Assignee of bankrupt.—By a local and personal act, transfers of debentures were to be by indorsement by deed, and in a given form, and were to be entered in the books of the company, and "after such entry, but not till then, the assignee was to be entitled to the benefit." *Held*, that this did not apply to a transfer by act of law, as in the case of bankruptcy. *Lane v. Smith*, 14 Beav. 49.

TRUSTS OF WILL.

Pleadings.—Bankrupt.—Leaseholds.—The interest of a bankrupt in leaseholds, is not finally divested until the creditors' assignees are chosen; and, therefore, if only the official assignee has been appointed, the bankrupt cannot plead his bankruptcy to a bill filed against him, to have the trusts of the will under which he took the leaseholds, carried into execution. *Turner v. Nicholls*, 16 Sim. 566.

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SATURDAY, JULY 24, 1852.  
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MASTERS IN CHANCERY ABOLITION ACT.

AMONGST the earliest of the Statutes of the Session lately terminated, we have laid before our readers (*ante*, p. 211), without abbreviation, the important Act by which the office of Masters in Ordinary in Chancery is abolished, and the greatest practical change, which has taken place in our recollection, introduced, not merely in procedure but in the constitution of the Court of Chancery.

As most of our readers are aware, the Act comes into actual operation on the first day of Michaelmas Term next, when the two senior Masters, Masters Farrer and Brougham are to be released from the performance of any further duty as Masters in Ordinary, and the Act contemplates that the remaining Masters shall retire according to seniority, as speedily as the matters depending before them can be wound up. After the first day of Michaelmas Term, no reference is to be made to any of the Masters, except in cases where the Court may think it expedient, by reason of some previous reference, and in cases under the Joint-Stock Companies' Winding-up Acts.

As a check upon the dilatoriness of the parties, it is also provided, that if the Master, by reason of the conduct of the parties, is unable to dispose of any matter referred to him, he may report to the Court, and if the parties neglect to bring his report to the notice of the Court within a limited period, the Master may direct it to be done by the solicitor to the Suitors' Fund, who is to be reimbursed out of the funds in the cause, or by the parties, as the Court may think just.¹

The unmistakable object of the Act is to get rid of the Masters' Office, its system of procedure and cumbrous machinery, and it may reasonably be expected that within a very limited period this object will be completely effected. The truth is, that the office of Master in Ordinary had outgrown the purposes for which it was created, and instead of assisting the Lord Chancellor and enabling him to perform the functions of his office with ease and rapidity, it acted only as a clog upon the wheels, and prevented the Judge from coming to a satisfactory conclusion. In its inception nothing could be more reasonable and useful than the office of Master. The Master sat in Court with the Chancellor, heard the case opened and argued, and took from the Chancellor's lips his directions how inquiries and investigations, which could not be made conveniently in Court, should be conducted out of Court, and then reported to the Chancellor the result of those investigations.

The great reform contemplated by the Act 15 & 16 Vic. c. 80, appears to be little more than a return to this simple course of procedure necessarily modified by the alterations introduced in the constitution of the Court. The original business of the Court of Chancery now comes for the most part, not before the Lord Chancellor, but before the Master of the Rolls and the Vice-Chancellors in the first instance, and as the preamble to the Act of last Session states, it is expedient that the business heretofore disposed of in the Masters' Offices, should in future be transacted "by and under the more immediate direction and control" of those Judges. It does undoubtedly occa-

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the present vacation it will not be practicable to expedite the proceedings to any considerable extent.

<sup>1</sup> This part of the Act is now in operation, under the 7th, 8th, and 9th sections, but during  
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sionally happen that matters are discussed in open Court, before the Equity Judges, which could more conveniently be heard and disposed of by a Judge sitting at Chambers. Those cases, however, are not perhaps of very frequent recurrence. There is a section in the new Act empowering and requiring the Master of the Rolls and Vice-Chancellors, "to sit at Chambers for the despatch of such part of the business of the Court as can, without detriment to the public advantage arising from the discussion of questions in open Court, be heard at Chambers," but the improvement in Chancery practice, we anticipate, will not arise so much from the discussion and despatch of business by the Judges at Chambers, as by the facilities which the Sittings at Chambers afford for taking the opinion and directions of a Judge upon interlocutory matters, without the expense and delay necessarily incidental to a formal application to the Court.

The Judges cannot give less of their time and attention to the Court business than they now do (unless additional Judges are appointed) without delaying the public business, and creating evils as great as any that the new Act is intended to remove. Unless the Court business should diminish in its amount, or become less urgent in its nature, which cannot be reasonably expected, the Master of the Rolls and the Vice-Chancellors, we apprehend, can afford to devote a very small proportion of their time to the Chamber business.<sup>2</sup> The time thus appropriated, though limited, may be most usefully applied. It will be in vain for the Judges to endeavour to do at Chambers all that the Masters did at their offices. All that the Judges can be expected to do, and should aim at doing, is to direct and control their clerks. The chief clerks are in fact substituted for the Masters. They will henceforth perform all the functions heretofore beneficially exercised by the Masters, without being incumbered by a machinery which rendered the Masters' Offices a nuisance rather than a benefit.

The office of Master in Ordinary had be-

come one of great dignity and importance, to which, even at the present day, a considerable salary is attached. The office was therefore an object of ambition to men of high standing at the Bar or closely connected with those who had the power of dispensing judicial patronage. The consequence has been, that the Masters were above their work. Instead of being ancillary to the Judges, they were substantially independent Judges, whose decrees were subject to revision upon exceptions, which was nothing more nor less than an appeal in the most objectionable shape.

The chief clerks are to be selected from a different class—a class including the ablest and most experienced men of business. The Master of the Rolls and Vice-Chancellors respectively are to appoint two chief clerks, "each to be respectively attached to each such Judge," and the qualification to each chief clerk is declared (by section 17) to be, that "he shall have been chief clerk to one of the Masters in Ordinary, or have been admitted on the Roll of Solicitors or Attorneys, in one of the Courts at Westminster Hall, and practised as such solicitor or attorney for the period of *ten years at least immediately preceding his appointment*." Messrs. George Whiting, Henry Leman, and Charles Pugh, who have held the office of chief clerks under the Masters in Ordinary, are specially appointed under the Act chief clerks of three of the Equity Judges, but the other chief clerks are to be nominated by the Equity Judges with the approbation of the Chancellor, and selected either from the small body of existing chief clerks or from the Roll of practising Solicitors of ten years' standing. It is expressly declared, that the chief clerk shall be appointed "for the purpose of assisting in the general business of each Court and the causes and matters belonging thereto," but it is also provided that the Judges respectively shall have the power "to order what matters and things shall be investigated by and before their chief clerks, either with or without their direction during their progress, and what matters and things shall be heard by themselves; and if the Judge shall so direct, his chief clerks respectively shall take accounts, and make such inquiries as have usually been prosecuted before the chief clerks of the present Masters, and the Judge shall give such aid and directions in any such account or inquiry as he may think proper." It is also provided, that in any proceedings to be taken before him the chief clerk shall have full power "to issue

<sup>2</sup> The business which the Act contemplates may be more conveniently disposed of by the Judges at Chambers, consists of applications for time to plead, answer, or demur; for leave to amend bills or claims; for enlarging publication, and also applications for the production of documents, relating to the conduct of suits or matters, the guardianship and maintenance of infants, and matters connected with the management of property. *Vide* sect. 26.

advertisements, to summon parties and witnesses, to administer oaths, to take affidavits and acknowledgments (other than acknowledgments of married women,) and when so directed by the Judge to whose Court he is attached, to examine parties and witnesses, either upon interrogatories or *visd voce* as the Judge shall direct."

The directions given by the Judge touching any proceedings before the chief clerk are to require no particular form, but the result is to be stated in a *short certificate*, and not embodied in a formal report unless so directed, and the approval of the Judge to the certificate is to be testified merely by his signature, and no exceptions shall lie to any certificate or report of the chief clerk, but within a limited time the opinion of the Judge may be taken upon any particular matter, or upon the general result of the proceeding when brought to a conclusion by the chief clerk.

Each chief clerk is to have a junior clerk, to be also appointed by the Judge, and the salary of the chief clerk is to be 1,200*l.*, with power to the Lord Chancellor to increase it to 1,500*l.*, whilst the junior clerk is to have 250*l.*, which may be increased to 300*l.*; and in case of permanent infirmity disabling from the due execution of his office, the chief clerk and junior clerk, respectively, may upon resignation and by the order of the Lord Chancellor, have an annuity not exceeding two-thirds of the yearly salary.

Such is an outline of the simple scheme about to be substituted for the Masters' Office. It is an important experiment about to be tried for the correction of an admitted evil. It has been generally, if not universally felt, that the abuses which had grown up in the system of procedure in the Masters' Offices, could not be effectually remedied, without sweeping away the office. Much that was practically useful in its construction is preserved. That which was done indirectly and in the name of the Master by the chief clerk, will now be done directly under a full sense of responsibility. The suitors and the Judge will be brought nearer, and the practitioner will act with the satisfaction and confidence caused by the conviction, that the proceedings are under the superintendence and control of a mind accustomed to business, and not uninformed upon the details of practice.

Under all the circumstances, it appears to be the manifest duty of the Legal Profession to afford their cordial assistance in endeavouring to bring to a successful issue an experiment in which the public is so deeply interested.

## NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

### IMPROVEMENT OF THE JURISDICTION OF EQUITY.

15 & 16 VICT. c. 86.

Practice of engrossing bills on parchment discontinued, and a printed bill to be filed instead; s. 1.

Writs of subpoena and summons to be abolished; s. 2.

Defendants to be served with a printed bill in lieu of the writs of subpoena and summons; s. 3.

The filing and service of a printed bill or claim to have the same effect as the filing and issuing of writs of subpoena and summons; s. 4.

The service of printed bill to be effected as writs of subpoena heretofore; s. 5.

Written copies of bills may be served in certain cases upon plaintiff undertaking to file a printed copy in 14 days; s. 6.

Plaintiff to deliver printed copies of bill or claim at rate prescribed by Lord Chancellor; s. 7.

Provisions as to filing, &c., prints of original bill extended to amendments. In certain cases a printed bill may be wholly or partially amended; s. 8.

Power to Lord Chancellor to revive the present practice as to filing of bills, &c.; s. 9.

Bills of complaint to contain concise narratives of material facts, &c., divided into numbered paragraphs, but not to contain interrogatories; s. 10.

Person whose name is used as next friend of any infant, &c., in any suit, &c., to sign a written authority; s. 11.

Interrogatories to be filed in Record Office by plaintiff within time prescribed; s. 12.

Defendants may answer without leave within the time now allowed, though not required so to do by plaintiff; but after that time defendant must have leave; s. 13.

Defendant's answer may contain, not only answers to interrogatories, but statements material to his case; s. 14.

Plaintiff may, on expiry of time for answering, but before replication, move for a decree or decretal order. Affidavits may be filed; s. 15.

Court may refuse or grant such motion, or make order for further prosecution, &c.; s. 16.

Practice of excepting to bills, answers, &c., for impertinence abolished. Proviso as to costs; s. 17.

Court or Judge may order defendant to produce documents, &c., on oath; s. 18.

In certain cases defendant, after answer, may file interrogatories for examination of plaintiff. Defendant may exhibit a cross bill instead of filing interrogatories; s. 19.

Upon application of defendant after answer, plaintiff may be required to produce documents on oath; s. 20.

Practice of issuing Commissions to take answers, &c., within the jurisdiction of the Court abolished; s. 21.

Pleas, declarations, &c., in Chancery, how to be sworn and taken in Scotland, Ireland, the Channel Islands, &c.; s. 22.

Penalty for falsely swearing, &c.; s. 23.

Penalty for forging signature or seal of Judge, &c., empowered to administer oaths under this Act; s. 24.

Answers, &c., to be filed without oath of messenger; s. 25.

Issue may be joined by filing replication as at present; s. 26.

Defendant not having been required to answer, and not answering, may move for dismissal of bill for want of prosecution; s. 27.

Practice of Court as to, and mode of examining witnesses, abolished. Court may order particular witnesses to be examined upon interrogatories as now practised; s. 28.

Plaintiff, where suits by bill at issue, may give notice to defendant to adduce evidence orally or by affidavit; s. 29.

Evidence may be taken orally, if required, but the Court may in certain cases make an order, &c.; s. 30.

Witnesses to be examined by one of the examiners of the Court in the presence of the parties; s. 31.

Depositions to be taken down in writing and read over to the witness, who shall sign the same in presence of the parties, but if he refuses to sign, examiner may, and state any special matter he may think fit; s. 32.

If parties refuse to be sworn or to answer any lawful questions, the same course to be pursued as is now adopted. Proviso as to witness demurring to questions; s. 33.

Original depositions to be transmitted to the Record Office, and filed; s. 34.

Commission for examination of witnesses dispensed with, and examiner empowered to administer oaths; s. 35.

Affidavits as to particular facts, &c., may be used; s. 36.

Affidavits to be divided into paragraphs numbered; s. 37.

Evidence oral or by affidavit, on both

sides, to be closed within time prescribed by general order. Witnesses by affidavit to be subject to oral cross-examination, and afterwards to re-examination. Witnesses bound to attend. As to expenses attending cross-examinations, &c.; s. 38.

Court may require the production and oral examination before itself of any witnesses, &c., and determine payment of the costs; s. 39.

Any party in a cause may by subpoena require attendance of any witness before an examiner; s. 40.

Evidence subsequent to hearing to be taken the same as prior to hearing; s. 41.

Defendant not to take objection for want of parties in any case to which rules herein set forth shall extend; s. 42.

Practice of setting down a cause on objection for want of parties abolished; s. 43.

Court may proceed in any suit, &c., without representative of deceased person, or may appoint one; s. 44.

Creditor, &c., may summon executor, &c., to show cause why an order for administration of personal estate should not be granted. Power to Judge to order administration of such estate; s. 45.

Copy of summons to be filed in Record Office of Court; s. 46.

Creditor, &c., may obtain an order for administration of real estate; s. 47.

Court may direct sale of mortgaged property instead of a foreclosure on such terms as it may think fit; s. 48.

Suit not to be dismissed for misjoinder of plaintiffs, but Court may modify its decree, according to special circumstances; s. 49.

No suit to be objected to because only declaratory order sought; s. 50.

Court may decide between some of the parties without making other interested parties to the suit. Proviso; s. 51.

In case of abatement, &c., of suit, an order may be made, which shall have same effect as a bill of revivor; s. 52.

New facts, &c., after commencement of suit, to be introduced as amendments to bill, &c.; s. 53.

Where account required to be taken, Court may give special directions as to the mode of taking same; s. 54.

Court may order real estate, to be sold, if required; s. 55.

Before sale of estate, abstract of title to be laid before some conveyancing counsel. Time for delivery of abstract to be specified in conditions of sale; s. 56.

Where real or personal property is the subject of proceedings, Court may allow to

parties part or the whole of the annual income; s. 57.

Practice as to injunctions to stay proceedings at law to be assimilated to practice as to special injunctions; s. 58.

Answer of defendant on motion for injunction or receiver, &c., to be regarded as an affidavit; s. 59.

In case directions as to practice, &c., not followed, Court may make order and award costs; s. 60.

Court of Chancery not to direct cases to be stated for opinions of Court of Common Law, but to decide the same; s. 61.

Court may determine legal title of party seeking relief without requiring parties to proceed to law; s. 62.

Lord Chancellor and Judges to make general rules and orders for carrying purposes of this Act into effect; s. 63.

Such general rules or orders to be laid before Parliament; s. 64.

Power to Lord Chancellor to increase salaries of examiners. If examiner decline to continue, Lord Chancellor may order a certain annuity to be paid to him; s. 65.

Construction of terms; s. 66.

Commencement of Act from and after 1st November; s. 67.

The following are the sections of the Act:—

An Act to amend the Practice and Course of Proceeding in the High Court of Chancery.  
[1st July, 1852.]

Whereas it is expedient to amend the practice and course of proceeding in the High Court of Chancery: Be it enacted as follows:—

1. From and after the time hereinafter appointed for the commencement of this Act, the practice of engrossing on parchment bills of complaint or claims to be filed in the said Court, and of filing such engrossment, shall be discontinued; and the clerks of record and writs of the said Court shall receive and file a printed bill of complaint or claim, in lieu of an engrossment thereof, in like manner as they now receive and file such engrossment.

2. The writ of subpoena to appear to and answer a bill of complaint in the said Court, and the writ of summons upon a claim, shall respectively be abolished.

3. In lieu of serving the defendant to a bill of complaint in the said Court with a writ of subpoena to appear to and answer the same, and in lieu of serving the defendant to a claim in the said Court with a writ of summons upon such claim, in the mode and according to the practice now adopted in the said Court with reference to such writs respectively, the defendant shall be served with a printed bill of complaint or claim, with an indorsement thereon, in the form or to the effect set out in the

Schedule to this Act, with such variations as circumstances may require, such printed bill of complaint or claim so to be served being previously stamped with a proper stamp by one of the clerks of records and writs, indicating the filing of such bill of complaint or claim, and the date of the filing thereof.

4. The filing of a printed bill of complaint or claim in the said Court shall have the same effect as the filing of a bill of complaint or claim in the said Court, and the issuing of a subpoena or writ of summons thereon respectively, now have, and the service upon the defendant of a printed bill of complaint or of a claim so filed, with such indorsement thereon, so stamped as aforesaid, shall have the same effect as the service on him of a writ of subpoena or writ of summons respectively now has, and shall entitle the plaintiff in such suit to such remedies for default of appearance and otherwise as he is now entitled to in case of due and proper service of a subpoena to appear to and answer a bill of complaint or of a writ of summons upon a claim.

5. The service upon any defendant of a printed copy of a bill of complaint or of a claim in the said Court shall be effected in the same manner as service of a writ of subpoena to appear to and answer a bill of complaint is now effected, save only that it shall not be necessary to produce the original bill or claim, which will be on the files of the Court; provided that the Court shall be at liberty to direct substituted service of such printed bill or claim, in such manner and in such cases as it shall think fit.

6. Notwithstanding the provisions hereinbefore contained, the clerks of records and writs of the said Court may receive and file a written copy of any bill of complaint praying a writ of injunction or a writ of *se exeat regno*, or filed for the purpose either solely or among other things of making an infant a ward of the said Court, upon the personal undertaking of the plaintiff or his solicitor to file a printed copy of such bill within 14 days, and every bill of complaint so filed shall be deemed and taken to have been filed at the time of filing the written copy thereof; and a written copy of any such bill of complaint, stamped as aforesaid, and with such indorsement thereon as aforesaid, may be served on any defendant thereto, and such service shall have the same effect as the service of a printed copy.

7. The plaintiff in any suit to be commenced in the said Court after the time hereinafter appointed for the commencement of this Act shall be bound to deliver to the defendant or his solicitor, upon application for the same, such a number of printed copies of his bill of complaint or claim as he shall have occasion for, upon being paid for the same at such rate as shall be prescribed by any general order of the Lord Chancellor in that behalf.

8. Upon the amendment of any bill of complaint or claim to be filed in the said Court after the time hereinafter appointed for the commencement of this Act, the provisions hereinbefore contained with respect to filing and



serving and delivering printed copies thereof shall, so far as may be, extend and be applicable to the bill or claim as amended: Provided that where, according to the present practice of the said Court, an amendment of a bill or claim may be made without a new engrossment thereof, or under such other circumstances as shall be prescribed by any general order of the Lord Chancellor in that behalf, a bill or claim may be wholly or partially amended by written alterations in the printed bill of complaint or claim so to be filed as aforesaid.

9. It shall be lawful for the Lord Chancellor from time to time to make any order or orders directing that the provisions hereinbefore contained as to printing or otherwise shall be discontinued or suspended until further order, and to direct that all or any of the present practice as to the filing of bills and claims, and the issuing and service of subpoenas and writs of summons, may be revived and come into operation as if this Act had not passed.

10. Every bill of complaint to be filed in the said Court after the time hereinafter appointed for the commencement of this Act shall contain as concisely as may be a narrative of the material facts, matters, and circumstances on which the plaintiff relies, such narrative being divided into paragraphs numbered consecutively, and each paragraph containing, as nearly as may be, a separate and distinct statement or allegation, and shall pray specifically for the relief which the plaintiff may conceive himself entitled to, and also for general relief; but such bill of complaint shall not contain any interrogatories for the examination of the defendant.

11. Before the name of any person shall be used in any suit to be instituted in the said Court as next friend of any infant, married woman, or other party, or as relator in any information, such person shall sign a written authority to the solicitor for that purpose, and such authority shall be filed with the bill, information, or claim.

12. Within a time to be limited by a general order of the said Lord Chancellor in that behalf, the plaintiff in any suit in the said Court commenced by bill may, if he requires an answer from any defendant thereto, file in the Record Office of the said Court interrogatories for the examination of the defendant or defendants, or such of them from whom he shall require an answer, and deliver to the defendant or defendants so required to answer, or to his or their solicitor, a copy of such interrogatories, or of such of them as shall be applicable to the particular defendant or defendants; and no defendant shall be called upon or required to put in any answer to a bill unless interrogatories shall have been so filed, and a copy hereof delivered to him or his solicitor, within the time so to be limited, or within such further time as the Court shall think fit to direct.

13. Whether the plaintiff in any suit in the said Court commenced by bill does or does not

require any answer from the defendant or any one or more of the defendants to the bill, such defendant or defendants may, without any leave of the Court, put in a plea, answer, or demurrer to the plaintiff's bill within the time now allowed to the defendant for demurring alone to a bill, or within such other time as shall be fixed by any general order of the Lord Chancellor in that behalf; but after that time a defendant or defendants not required to answer the plaintiff's bill shall not be at liberty to put in a plea, answer, or demurrer to the bill, without leave of the Court; provided that the power of the Court to grant further time for pleading, answering, or demurring to any bill, upon the application of any defendant or defendants thereto, whether required to answer the bill or not, shall remain in full force, and shall not be in anywise prejudiced or affected; provided also, that if the Court shall grant any further time to any defendant for pleading, answering, or demurring to the bill, the plaintiff's right to move for a decree under the provisions hereinafter contained shall in the meantime be suspended.

14. The answer of the defendant to any bill of complaint in the said Court may contain, not only the answer of the defendant to the interrogatories so filed as aforesaid, but such statements material to the case as the defendant may think it necessary or advisable to set forth therein, and such answer shall also be divided into paragraphs numbered consecutively, each paragraph containing as nearly as may be a separate and distinct statement or allegation.

15. The plaintiff in any suit commenced by bill shall be at liberty, at any time after the time allowed to the defendant for answering the same shall have expired (but before replication), to move the Court, upon such notice as shall in that behalf be prescribed by any general order of the Lord Chancellor, for such decree or decretal order as he may think himself entitled to; and the plaintiff and defendant respectively shall be at liberty to file affidavits in support of and in opposition to the motion so to be made, and to use the same on the hearing of such motion; and if such motion shall be made after an answer filed in the cause, the answer shall, for the purposes of the motion, be treated as an affidavit.

16. Upon any such motion for a decree or decretal order it shall be discretionary with the Court to grant or refuse the motion, or to make an order giving such directions for or with respect to the further prosecution of the suit as the circumstances of the case may require, and to make such order as to costs as it may think right.

17. The practice of excepting to bills, answers, and other proceedings in the said Court, for impertinence shall be and the same is hereby abolished: Provided always, that it shall be lawful for the Court to direct the costs occasioned by any impertinent matter introduced into any proceeding in the said Court to be paid by the party introducing the same, upon

application being made to the Court for that purpose.

18. It shall be lawful for the Court upon the application of the plaintiff in any suit in the said Court, whether commenced by bill or by claim, and as to a suit commenced by bill, whether the defendant may or may not have been required to answer the bill, or may or may not have been interrogated as to the possession of documents, to make an order for the production by any defendant, upon oath, of such of the documents in his possession or power relating to matters in question in the suit, as the Court shall think right; and the Court may deal with such documents, when produced, in such manner as shall appear just.

19. It shall be lawful for any defendant in any suit, whether commenced by bill or by claim, but in suits commenced by bill which the defendant is required to answer, not until after he shall have put in a sufficient answer to the bill, and without filing any cross bill of discovery, to file in the Record Office of the said Court interrogatories for the examination of the plaintiff, to which shall be prefixed a concise statement of the subjects on which a discovery is sought, and to deliver a copy of such interrogatories to the plaintiff or his solicitor; and such plaintiff shall be bound to answer such interrogatories, in like manner as if the same had been contained in a bill of discovery filed by the defendant against him on the day when such interrogatories shall have been filed, and as if the defendant to such bill of discovery had on the same day duly appeared; and the practice of the Court with reference to excepting to answers for insufficiency, or for scandal, shall extend and be applicable to answers put in to such interrogatories; provided that in determining the materiality or relevancy of any such answer, or of any exception thereto, the Court is to have regard, in suits commenced by bill, to the statements contained in the original bill, and in the answer which may have been put in thereto by the defendant exhibiting such interrogatories for the examination of the plaintiff, and in suits commenced by claim, to the statements therein, and in any affidavits which may have been filed either in support thereof or in opposition thereto: Provided also, that a defendant, if he shall think fit so to do, may exhibit a cross bill of discovery against the plaintiff, instead of filing interrogatories for his examination.

20. It shall be lawful for the Court, upon the application of any defendant in any suit, whether commenced by bill or by claim, but as to suits commenced by bill where the defendant is required to answer the plaintiff's bill, not until after he has put in a full and sufficient answer to the bill, unless the Court shall make any order to the contrary, to make an order for the production by the plaintiff in such suit, on oath, of such of the documents in his possession or power relating to the matters in question in the suit, as the Court shall think right; and the Court may deal

with such documents, when produced, in such manner as shall appear just.

21. The practice of the said Court, of issuing commissions to take pleas, answers, disclaimers, and examinations in causes and matters pending in the said Court shall, with respect to pleas, answers, disclaimers, and examinations taken within the jurisdiction of the Court, be and the same is hereby abolished; and any such plea, answer, disclaimer, or examination may be filed without any further or other formality than is required in the swearing and filing of an affidavit.

22. All pleas, answers, disclaimers, examinations, affidavits, declarations, affirmations, and attestations of honour in causes or matters depending in the High Court of Chancery, and also acknowledgments required for the purpose of enrolling any deed in the said Court, shall and may be sworn and taken in Scotland or Ireland, or the Channel Islands, or in any colony, island, plantation, or place under the dominion of her Majesty in foreign parts, before any Judge, Court, notary public, or person lawfully authorised to administer oaths, in such county, colony, island, plantation, or place respectively, or before any of her Majesty's consuls or vice-consuls in any foreign parts out of her Majesty's dominions; and the Judges and other officers of the said Court of Chancery shall take judicial notice of the seal or signature, as the case may be, of any such Court, Judge, notary public, person, consul, or vice-consul, attached, appended, or subscribed to any such pleas, answers, disclaimers, examinations, affidavits, affirmations, attestations of honour, declarations, acknowledgments, or other documents to be used in the said Court.

23. All persons swearing, declaring, affirming, or attesting before any person authorised by this Act to administer oaths and take declarations, affirmations, or attestations of honour shall be liable to all such penalties, punishments, and consequences for any wilful and corrupt false swearing, declaring, affirming, or attesting contained therein as if the matter sworn, declared, affirmed, or attested had been sworn, declared, affirmed, or attested before any Court or persons now by law authorised to administer oaths, and take declarations, affirmations, or attestations upon honour.

24. If any person shall forge the signature or the official seal of any such Judge, notary public, or other person lawfully authorised to administer oaths under this Act, or shall tender in evidence any plea, answer, disclaimer, examination, affidavit, or other judicial or official document with a false or counterfeit signature or seal of any such Judge, Court, notary public, or other person authorised as aforesaid attached or appended thereto, knowing the same signature or seal to be false or counterfeit, every such person shall be guilty of felony, and shall be liable to the same punishment as any offender under an Act passed in the 8 & 9 Vict., intituled "An Act to facilitate the Admission in Evidence of certain official and other documents."

25. Pleas, answers, disclaimers, or examinations, whether taken by commission out of the jurisdiction of the said Court or otherwise, may be filed without the oath of a messenger, and any alterations made therein previously to the taking thereof shall be authenticated according to the practice now in use with respect to affidavits.

26. In suits in the said Court commenced by bill, where notice of motion for a decree or decretal order shall not have been given, or, having been given, where a decree or decretal order shall not have been made thereon, issue shall be joined by filing a replication in the form or to the effect of the replication now in use in the said Court; and where a defendant shall not have been required to answer and shall not have answered the plaintiff's bill, he shall be considered to have traversed the case made by the bill.

27. Where a defendant to a suit in the said Court commenced by bill shall not have been required to answer the bill and shall not have answered the same, such defendant shall be at liberty to move to dismiss the bill for want of prosecution, at such times, and under such circumstances, and subject to such restrictions as shall be in that behalf prescribed by any general order of the Lord Chancellor.

28. The mode of examining witnesses in causes in the said Court, and all the practice of the said Court in relation thereto, so far as such practice shall be inconsistent with the mode hereinafter prescribed of examining such witnesses, and the practice in relation thereto, shall, from and after the time appointed for the commencement of this Act be abolished: Provided always, that the Court may, if it shall think fit, order any particular witness or witnesses within the jurisdiction of the said Court, or any witness or witnesses out of the jurisdiction of the said Court, to be examined upon interrogatories in the mode now practised in the said Court, and that with respect to such witness or witnesses the practice of the said Court in relation to the examination of witnesses shall continue in full force, save only so far as the same may be varied by any general order of the Lord Chancellor in that behalf, or by any order of the Court with reference to any particular case.

29. When any suit commenced by bill shall be at issue, the plaintiff shall, within such time thereafter as shall be prescribed in that behalf by any general order of the Lord Chancellor, give notice to the defendant that he desires that the evidence to be adduced in the cause shall be taken orally or upon affidavit, as the case may be; and if the plaintiff shall desire the evidence to be adduced upon affidavit, and the defendant, or some one of the defendants, if more than one, shall not, within such time as shall be prescribed in that behalf by any general order of the Lord Chancellor, give notice to the plaintiff or his solicitor that he or they desire the evidence to be oral, the plaintiff and defendants respectively shall be at liberty to verify their respective cases by affidavit.

30. When any of the parties to any suit commenced by bill desires that the evidence should be adduced orally, and gives notice thereof to the opposite party as hereinbefore provided, the same shall be taken orally, in the manner hereinafter provided; provided, that if the evidence be required to be oral merely by a party without a sufficient interest in the matters in question, the Court may, upon application in a summary way, make such order as shall be just.

31. All witnesses to be examined orally under the provisions of this Act shall be so examined by or before one of the examiners of the Court, or by or before an examiner to be specially appointed by the Court, the examiner being furnished by the plaintiff with a copy of the bill, and of the answer, if any, in the cause; and such examination shall take place in the presence of the parties, their counsel, solicitors, or agents, and the witnesses so examined orally shall be subject to cross-examination and re-examination; and such examination, cross-examination, and re-examination shall be conducted as nearly as may be in the mode now in use in Courts of Common Law with respect to a witness about to go abroad, and not expected to be present at the trial of a cause.

32. The depositions taken upon any such oral examination as aforesaid shall be taken down in writing by the examiner, not ordinarily by question and answer, but in the form of a narrative, and when completed shall be read over to the witness, and signed by him in the presence of the parties, or such of them as may think fit to attend: Provided always, that in case the witness shall refuse to sign the said depositions, then the examiner shall sign the same, and such examiner may, upon all examinations, state any special matter to the Court as he shall think fit: Provided also, that it shall be in the discretion of the examiner to put down any particular question or answer, if there should appear any special reason for doing so; and any question or questions which may be objected to shall be noticed or referred to by the examiner in or upon the depositions, and he shall state his opinion thereon to the counsel, solicitors, or parties, and shall refer to such statement on the face of the depositions, but he shall not have power to decide upon the materiality or relevancy of any question or questions; and the Court shall have power to deal with the costs of immaterial or irrelevant depositions as may be just.

33. If any person produced before any such examiner as a witness shall refuse to be sworn, or to answer any lawful question put to him by the examiner, or by either of the parties, or by his or their counsel, solicitor, or agent, the same course shall be adopted with respect to such witness as is now pursued in the case of a witness produced for examination before an examiner of the said Court, upon written interrogatories, and refusing to be sworn, or to answer some lawful question: Provided always, that if any witness shall demur or object to any

question or questions which may be put to him, the question or questions so put, and the demurrer or objection of the witness thereto, shall be taken down by the examiner, and transmitted by him to the Record Office of the said Court, to be there filed; and the validity of such demurrer or objection shall be decided by the Court; and the costs of and occasioned by such demurrer or objection shall be in the discretion of the Court.

34. When the examination of witnesses before any examiner shall have been concluded, the original depositions, authenticated by the signature of such examiner, shall be transmitted by him to the Record Office of the said Court, to be there filed, and any party to the suit may have a copy thereof of any part or portion thereof upon payment for the same in such manner as shall be provided by any general order of the Lord Chancellor in that behalf.

35. It shall not be necessary to sue out any commission for the examination of any witnesses within the jurisdiction of the said Court; and any examiner appointed by any order of the Court shall have the like power of administering oaths as commissioners now have under commissions issued by the Court for the examination of witnesses.

36. Notwithstanding that the plaintiff or the defendant in any suit in the said Court may have elected that the evidence in the cause should be taken orally, affidavits by particular witnesses, or affidavits as to particular facts or circumstances may, by consent, or by leave of the Court obtained upon notice, be used on the hearing of any cause, and such consent, with the approbation of the Court, may be given by or on the part of married women or infants or other persons under disability.

37. Every affidavit to be used in the said Court shall be divided into paragraphs, and every paragraph shall be numbered consecutively, and, as nearly as may be, shall be confined to a distinct portion of the subject.

38. The evidence on both sides in any suit in the said Court, whether taken orally or upon affidavit, shall be closed within such time or respective times after issue joined as shall in that behalf be prescribed by any general order of the Lord Chancellor, but with power to the Court to enlarge the same as it may see fit; and after the time fixed for closing the evidence no further evidence, whether oral or by affidavit, shall be receivable, without special leave of the Court previously obtained for that purpose: Provided always, that any witness who has made an affidavit filed by any party to a cause shall be subject to oral cross-examination within such time after the time fixed for closing the evidence as shall be prescribed in that behalf by any order of the Lord Chancellor, by or before an examiner, in the same manner as if the evidence given by him in his affidavit had been given by him orally before the examiner, and after such cross-examination may be re-examined orally by or on the part of the party by whom such affidavit was filed; and such witness shall be bound to attend before such exam-

iner to be so cross-examined and re-examined, upon receiving due and proper notice, and payment of his reasonable expenses, in like manner as if he had been duly served with a writ of subpoena *ad testificandum* before such examiner; and the expenses attending such cross-examination and re-examination shall be paid by the parties respectively, in like manner as if the witness so to be cross-examined were the witness of the party cross-examining, and shall be deemed costs in the cause of such parties respectively, unless the Court shall think fit otherwise to direct.

39. Upon the hearing of any cause depending in the said Court, whether commenced by bill or by claim, the Court, if it shall see fit so to do, may require the production and oral examination before itself of any witness or party in the cause, and may direct the costs of and attending the production and examination of such witness or party, to be paid by such of the parties to the suit or in such manner as it may think fit.

40. Any party in any cause or matter depending in the said Court may, by a writ of subpoena *ad testificandum* or *duces tecum*, require the attendance of any witness before an examiner of the said Court, or before an examiner specially appointed for the purpose, and examine such witness orally, for the purpose of using his evidence upon any claim, motion, petition, or other proceeding before the Court, in like manner as such witness would be bound to attend and be examined with a view to the hearing of a cause; and any party having made an affidavit to be used or which shall be used on any claim, motion, petition, or other proceeding before the Court shall be bound on being served with such writ to attend before an examiner, for the purpose of being cross-examined: Provided always, that the Court shall always have a discretionary power of acting upon such evidence as may be before it at the time, and of making such interim orders, or otherwise, as may appear necessary to meet the justice of the case.

41. In cases where it shall be necessary for any party to any cause depending in the said Court to go into evidence subsequently to the hearing of such cause, such evidence shall be taken as nearly as may be in the manner hereinbefore provided with reference to the taking of evidence with a view to such hearing.

42. It shall not be competent to any defendant in any suit in the said Court to take any objection for want of parties to such suit, in any case to which the rules next hereinafter set forth extend; and such rules shall be deemed and taken as part of the law and practice of the said Court, and any law or practice of the said Court inconsistent therewith shall be and is hereby abrogated and annulled.

Rule 1.—Any residuary legatee or next of kin may, without serving the remaining residuary legatees or next of kin, have a decree for the administration of the personal estate of a deceased person.

**Rule 2.**—Any legatee interested in a legacy charged upon real estate, and any person interested in the proceeds of real estate directed to be sold, may, without serving any other legatee or person interested in the proceeds of the estate, have a decree for the administration of the estate of a deceased person.

**Rule 3.**—Any residuary devisee or heir may, without serving any co-residuary devisee or co-heir, have the like decree.

**Rule 4.**—Any one of several *cestuis que trust* under any deed or instrument may, without serving any other of such *cestuis que trust*, have a decree for the execution of the trusts of the deed or instrument.

**Rule 5.**—In all cases of suits for the protection of property pending litigation, and in all cases in the nature of waste, one person may sue on behalf of himself and of all persons having the same interest.

**Rule 6.**—Any executor, administrator, or trustee may obtain a decree against any one legatee, next of kin, or *cestui que trust* for the administration of the estate, or the execution of the trusts.

**Rule 7.**—In all the above cases the Court, if it shall see fit, may require any other person or persons to be made a party or parties to the suit, and may, if it shall see fit, give the conduct of the suit to such person as it may deem proper, and may make such order in any particular case as it may deem just for placing the defendant on the record on the same footing in regard to costs as other parties having a common interest with him in the matter in question.

**Rule 8.**—In all the above cases the persons who, according to the present practice of the Court, would be necessary parties to the suit, shall be served with notice of the decree, and after such notice they shall be bound by the proceedings in the same manner as if they had been originally made parties to the suit, and they may by an order of course have liberty to attend the proceedings under the decree; and any party so served may, within such time as shall in that behalf be prescribed by the general order of the Lord Chancellor, apply to the Court to add to the decree.

**Rule 9.**—In all suits concerning real or personal estate which is vested in trustees under a will, settlement, or otherwise, such trustees shall represent the persons beneficially interested under the trust, in the same manner and to the same extent as the executors or administrators in suits concerning personal estate represent the persons beneficially interested in such personal estate; and in such cases it shall not be necessary to make the persons beneficially interested under the trusts parties to the suit; but the Court may, upon consideration of the matter, on the hearing, if it shall so think fit, order such persons, or any of them to be made parties.

**43.** The practice of the said Court of setting down a cause merely on an objection for want of parties to the suit shall be abolished.

**44.** If in any suit or other proceeding before the Court it shall appear to the Court that any deceased person who was interested in the matters in question has no legal personal representative, it shall be lawful for the Court either to proceed in the absence of any person representing the estate of such deceased person, or to appoint some person to represent such estate for all the purposes of the suit or other proceeding, on such notice to such person or persons, if any, as the Court shall think fit, either specially or generally by public advertisements; and the order so made by the said Court, and any orders consequent thereon, shall bind the estate of such deceased person in the same manner in every respect as if there had been a duly constituted legal personal representative of such deceased person, and such legal personal representative had been a party to the suit or proceeding, and had duly appeared and submitted his rights and interests to the protection of the Court.

**45.** It shall be lawful for any person claiming to be a creditor or a specific pecuniary or residuary legatee, or the next of kin, or some or one of the next of kin, of a deceased person, to apply for and obtain as of course, without bill or claim filed, or any other preliminary proceedings, a summons from the Master of the Rolls or any of the Vice-Chancellors requiring the executor or administrator, as the case may be, of such deceased person, to attend before him at Chambers, for the purposes of showing cause why an order for the administration of the personal estate of the deceased should not be granted; and upon proof by affidavit of the due service of such summons, or on the appearance in person or by his solicitor or counsel of such executor or administrator, and upon proof by affidavit of such other matters, if any, as such Judge shall require, it shall be lawful for such Judge, if in his discretion he shall think fit so to do, to make the usual order for the administration of the estate of the deceased, with such variations, if any, as the circumstances of the case may require; and the order so made shall have the force and effect of a decree to the like effect made on the hearing of a cause or claim between the same parties; provided that such Judge shall have full discretionary power to grant or refuse such order, or to give any special directions touching the carriage or execution of such order, and in the case of applications for any such order by two or more different persons or classes of persons, to grant the same to such one or more of the claimants or of the classes of claimants as he may think fit; and if the Judge shall think proper, the carriage of the order may subsequently be given to such party interested, and upon such terms as the Judge may direct.

**46.** A duplicate or copy of such summons shall, previously to the service thereof, be filed in the Record Office of the said Court; and no service thereof upon any executor or administrator shall be of any validity unless the copy so served shall be stamped with a stamp of such office indicating the filing thereof; and the

filing of such summons shall have the same effect with respect to *lis pendens* as the filing of a bill or claim.

47. It shall be lawful for any person claiming to be a creditor of any deceased person, or interested under his will, to apply for and obtain in a summary way, in the manner hereinbefore provided with respect to the personal estate of a deceased person, an order for the administration of the real estate of a deceased person where the whole of such real estate is by devise vested in trustees who are by the will empowered to sell such real estate, and authorised to give receipts for the rents and profits thereof, and for the produce of the sale of such real estate; and all the provisions hereinbefore contained with respect to the application for such order in relation to the personal estate of a deceased person, and consequent thereon, shall extend and be applicable to an application for such order as last hereinbefore mentioned with respect to real estate.

48. It shall be lawful for the Court in any suit for the foreclosure of the equity of redemption in any mortgaged property, upon the request of the mortgagee, or of any subsequent incumbrancer, or of the mortgagor, or any person claiming under them respectively, to direct a sale of such property, instead of a foreclosure of such equity of redemption, on such terms as the Court may think fit to direct, and, if the Court shall so think fit, without previously determining the priorities of incumbrances, or giving the usual or any time to redeem; provided that if such request shall be made by any such subsequent incumbrancer, or by the mortgagor, or by any person claiming under them respectively, the Court shall not direct any such sale, without the consent of the mortgagee or the persons claiming under him, unless the party making such request shall deposit in Court a reasonable sum of money, to be fixed by the Court, for the purpose of securing the performance of such terms as the Court may think fit to impose on the party making such request.

49. No suit in the said Court shall be dismissed by reason only of the misjoinder of persons as plaintiffs therein, but wherever it shall appear to the Court that, notwithstanding the conflict of interest in the co-plaintiffs, or the want of interest in some of the plaintiffs, or the existence of some ground of defence affecting some or one of the plaintiffs, the plaintiffs, or some or one of them, are or is entitled to relief, the Court shall have power to grant such relief, and to modify its decree, according to the special circumstances of the case, and for that purpose to direct such amendments, if any, as may be necessary, and at the hearing, before such amendments are made, to treat any one or more of the plaintiffs as if he or they was or were a defendant or defendants in the suit, and the remaining or other plaintiff or plaintiffs was or were the only plaintiff or plaintiffs on the record; and where there is a misjoinder of plaintiffs, and the plaintiff having an interest shall have died

leaving a plaintiff on the record without an interest, the Court may, at the hearing of the cause, order the cause to stand revived as may appear just, and proceed to a decision of the cause, if it shall see fit, and to give such directions as to costs or otherwise as may appear just and expedient.

50. No suit in the said Court shall be open to objection on the ground that a merely declaratory decree or order is sought thereby, and it shall be lawful for the Court to make binding declarations of right without granting consequential relief.

51. It shall be lawful for the Court to adjudicate on questions arising between parties notwithstanding that they may be some only of the parties interested in the property respecting which the question may have arisen, or that the property in question is comprised with other property in the same settlement, will, or other instrument, without making the other parties interested in the property respecting which the question may have arisen, or interested under the same settlement, will, or other instrument, parties to the suit, and without requiring the whole trusts and purposes of the settlement, will, or other instrument to be executed under the direction of the Court, and without taking the accounts of the trustees or other accounting parties, or ascertaining the particulars or amount of the property touching which the question or questions may have arisen: Provided always, that if the Court shall be of opinion that the application is fraudulent or collusive, or for some other reason ought not to be entertained, it shall have power to refuse to make the order prayed.

52. Upon any suit in the said Court becoming abated by death, marriage, or otherwise, or defective by reason of some change or transmission of interest or liability, it shall not be necessary to exhibit any bill of revivor or supplemental bill in order to obtain the usual order to revive such suit, or the usual or necessary decree or order to carry on the proceedings; but an order to the effect of the usual order to revive, or of the usual supplemental decree may be obtained as of course upon an allegation of the abatement of such suit, or of the same having become defective, and of the change or transmission of interest or liability; and an order so obtained, when served upon the party or parties who according to the present practice of the said Court would be defendant or defendants to the bill of revivor or supplemental bill, shall from the time of such service be binding on such party or parties in the same manner in every respect as if such order had been regularly obtained according to the existing practice of the said Court; and such party or parties shall thenceforth become a party or parties to the suit, and shall be bound to enter an appearance thereto in the office of the clerks of records and write, within such time and in like manner as if he or they had been duly served with process to appear to a bill of revivor or supplemental bill filed against him;

provided that it shall be open to the party or parties so served, within such time after service as shall be in that behalf prescribed by any general order of the Lord Chancellor, to apply to the Court by motion or petition to discharge such order on any ground which would have been open to him on a bill of revivor or supplemental bill, stating the previous proceedings in the suit and the alleged change or transmission of interest or liability, and praying the usual relief consequent thereon: Provided also, that if any party so served shall be under any disability other than coverture, such order shall be of no force or effect as against such party until a guardian or guardians *ad litem* shall have been duly appointed for such party, and such time shall have elapsed thereafter as shall be prescribed by any general order of the Lord Chancellor in that behalf.

53. It shall not be necessary to exhibit any supplemental bill in the said Court for the purpose only of stating or putting in issue facts or circumstances which may have occurred after the institution of any suit; but such facts or circumstances may be introduced by way of amendment into the original bill of complaint in the suit if the cause is otherwise in such a state as to allow of an amendment being made in the bill, and if not, the plaintiff shall be at liberty to state such facts or circumstances on the record, in such manner and subject to such rules and regulations with respect to the proof thereof, and the affording the defendant leave and opportunity of answering and meeting the same as shall in that behalf be prescribed by any general order of the Lord Chancellor.

54. It shall be lawful for the Court, in any case where any account is required to be taken, to give such special directions, if any, as it may think fit with respect to the mode in which the account should be taken or vouched, and such special directions may be given, either by the decree or order directing such account, or by any subsequent order or orders, upon its appearing to the Court that the circumstances of the case are such as to require such special directions; and particularly it shall be lawful for the Court, in cases where it shall think fit so to do, to direct that in taking the account the books of account in which the accounts required to be taken have been kept, or any of them, shall be taken as *prima facie* evidence of the truth of the matters therein contained, with liberty to the parties interested to take such objections thereto as they may be advised.

55. If after a suit shall have been instituted in the said Court in relation to any real estate it shall appear to the Court that it will be necessary or expedient that the said real estate or any part thereof should be sold for the purposes of such suit, it shall be lawful for the said Court to direct the same to be sold at any time after the institution thereof, and such sale shall be as valid to all intents and purposes as if directed to be made by a decree or decretal

order on the hearing of such cause; and any party to the suit in possession of such estate, or in receipt of the rents and profits thereof, shall be compelled to deliver up such possession or receipt to the purchaser or such other person as the Court shall direct.

56. Before any estate or interest shall be put up for sale under a decree or order of the Court of Chancery, an abstract of the title thereto shall, with the approbation of the Court, be laid before some conveyancing counsel to be approved by the Court, for the opinion of such counsel thereon, to the intent that the said Court may be the better enabled to give such directions as may be necessary respecting the conditions of sale of such estate or interest, and other matters connected with the sale thereof; and when an estate or interest shall be so put up for sale, a time for the delivery of the abstract of title thereto to the purchaser or his solicitor shall be specified in the said conditions of sale.

57. Where any real or personal property shall form the subject of any proceedings in the Court of Chancery, and the Court shall be satisfied that the same will be more than sufficient to answer all the claims thereon which ought to be provided for in such suit, it shall be lawful for the said Court at any time after the commencement of such proceedings to allow to the parties interested therein, or any one or more of them, the whole or part of the annual income of such real property, or a part of such personal property, or a part or the whole of the income thereof, up to such time as the said Court shall direct, and for that purpose to make such orders as may appear to the said Court necessary or expedient.

58. The practice of the Court of Chancery with respect to injunctions for the stay of proceedings at law shall, so far as the nature of the case will admit, be assimilated to the practice of such Court with respect to special injunctions generally, and such injunctions may be granted upon interlocutory applications supported by affidavit, in like manner as other special injunctions are granted by the said Court.

59. Upon application by motion or petition to the Court in any suit depending therein for an injunction or a receiver, or to dissolve an injunction, or discharge an order appointing a receiver, the answer of the defendant shall, for the purpose of evidence on such motion or petition, be regarded merely as an affidavit of the defendant, and affidavits may be received and read in opposition thereto.

60. In case any of the directions herein contained with respect to the practice and course of proceeding in the said Court of Chancery shall by mistake of parties fail to be followed in any suit or proceeding in the said Court, it shall be lawful for the said Court, if it shall think fit, upon payment of such costs as such Court shall direct, to make such order giving effect to and rectifying such proceedings as may be justified by the merits of the case.

61. It shall not be lawful for the said Court

of Chancery, in any cause or matter, to direct a case to be stated for the opinion of any Court of Common Law, but the said Court of Chancery shall have full power to determine any questions of law, which in the judgment of the said Court of Chancery shall be necessary to be decided previously to the decision of the equitable question at issue between the parties.

62. In cases where, according to the present practice of the Court of Chancery, such Court declines to grant equitable relief until the legal title or right of the party or parties seeking such relief shall have been established in a proceeding at law, the said Court may itself determine such title or right without requiring the parties to proceed at law to establish the same.

63. The Lord Chancellor, with the advice and assistance of the Master of the Rolls, the Lords Justices of the Court of Appeal in Chancery, and the Vice-Chancellors, or any three of them, may and they are hereby required from time to time to make general rules and orders for carrying the purposes of this Act into effect, and for regulating the times and form and mode of procedure, and generally the practice of the said Court, in respect of the matters to which this Act relates, and for regulating the fees and allowances to all officers of the said Court and solicitors thereof in respect to such matters and, so far as they may be found expedient, for altering the course of proceeding hereinbefore prescribed in respect to the matters to which this Act relates, or any of them; and such rules and orders may from time to time be rescinded or altered by the like authority; and all such rules and orders shall take effect as general rules of the said Court.

64. All general rules and orders of the Lord Chancellor, with such advice and assistance as aforesaid, shall immediately after the making and issuing thereof be laid before both Houses of Parliament, if Parliament be then sitting, or if Parliament be not then sitting, within five days after the next meeting thereof: Provided always, that if either of the Houses of Parliament shall, by any resolution passed within 36 days after such rules or orders have been laid before such Houses of Parliament, resolve that the whole or any part of such rules or orders ought not to continue in force, in such case the whole, or such part thereof as shall be so included in such resolution, shall, from and after such resolution, cease to be binding.

65. And whereas the present examiners of the Court have been heretofore appointed for the purpose only of taking the depositions of witnesses in private, and upon written interrogatories prepared by counsel: And whereas the public examination of witnesses orally, under the provisions of this Act, will materially alter the nature of the duties and increase the responsibility of the said examiners: Be it therefore enacted, That it shall be lawful for the Lord Chancellor and he is hereby empowered to order and direct a sum to be paid to each of the said examiners, out of the Fund intituled "The Sutors' Fee Fund," from and

after the 1st of Nov., 1852, such a sum as shall, together with the sums now payable, make up the annual sum of 1,500*l.*: Provided always, that if either of the present examiners should feel himself unable or should decline to continue his services in the same office upon the conditions provided under this Act, it shall be lawful for the Lord Chancellor to order to be paid to such examiner retiring an annuity of an amount not exceeding three-fourths of the salary which he has hitherto received.

66. In the construction of this Act the words "bill of complaint" shall mean also and include information; the word "affidavit" shall mean also and include affirmation; the expression "Lord Chancellor" shall mean and include the Lord Chancellor, Lord Keeper, and Lords Commissioners of the Great Seal of the United Kingdom for the time being; and the expression "general order of the Lord Chancellor" shall mean general order of the Lord Chancellor with such advice and assistance as aforesaid.

67. This Act shall commence and take effect from and after the 1st day of November, 1852; provided that it shall be lawful for the Lord Chancellor, with such advice and assistance as aforesaid, to make and issue any such general rules or orders as aforesaid at any time after the passing of this Act so as the same be not made to take effect before the time appointed for the commencement of this Act.

#### SCHEDULE.

##### *Form of Indorsement on Bill of Complaint.*

VICTORIA R.

To the within-named defendant, *C. D.*,  
greeting.

WE command you ["and every of you," where there is more than one defendant]. That within eight days after service hereof on you, exclusive of the day of such service, you cause an appearance to be entered for you in our High Court of Chancery to the within bill of complaint of the within-named *A. B.*, and that you observe what our said Court shall direct. Witness ourself at Westminster, the       day of       , in the       year of our reign.

Note.—If you fail to comply with the above directions, you will be liable to be arrested and imprisoned.

Appearances are to be entered at the Record and Writ Clerke' Office, Chancery Lane, London.

##### *Form of Indorsement on Claim.*

VICTORIA R.

To the within-named defendant, *C. D.*,  
greeting.

WE command you ["and every of you," where there is more than one defendant], that within eight days after service hereof on you, exclusive of the day of such service, you cause an appearance to be entered for you in our High Court of Chancery to the within claim of the within-named *A. B.*; and further, that on



the fourteenth day after the service hereof, or on the seal or motion day then next following, you do personally or by counsel appear in the Court of our Lord Chancellor before the Vice-Chancellor [naming him] [or, in the Court of our Master of the Rolls], at ten of the clock in the forenoon, and then and there show cause if you can why the said A. B. should not have such relief against you as is within claimed, or why such order as shall be just with reference to the claim should not be made. Witness ourself at Westminster, the day of , in the year of our reign.

Note.—Appearances are to be entered at the Record and Writ Clerks' Office, Chancery Lane, London; and if you neglect to enter your appearance, and either personally or by your counsel to appear in the High Court of Chancery at the place and on the day and hour above-mentioned, you will be subject to such order as the Court may think fit to make against you in your absence for payment or satisfaction of the said claim, or as the nature and circumstances of the case may require.

#### NOTICES OF NEW BOOKS.

*A Manual of the Parliamentary Election Law of the United Kingdom of Great Britain and Ireland.* By SAMUEL WARREN, Esq., F.R.S., of the Inner Temple, one of her Majesty's Counsel. London: Butterworths. Edinburgh: Blackwood & Sons. Dublin: Hodges & Smith. 1852.

WE briefly noticed this valuable work on its publication a fortnight ago. A volume from the pen of Mr. Warren would at all times call for our respectful attention; but a Treatise on the Law of *Parliamentary Elections* at the present moment, amidst a General Election, under circumstances of peculiar interest,—legal and constitutional, as well as social and political,—demands a fuller review than we were at the moment able to give it. The new Parliament will assemble under circumstances of no common interest. The issue to be tried is not one affecting only the law of the importation of foreign corn, but of other and more important alterations,—deeply concerning the stability of both Church and State.

In these circumstances, our readers will rejoice that Mr. Warren has devoted his great talents and learning to set before the Community, as well as the Profession, the present state of the law in all its bearings upon the election of our representatives in Parliament. Whilst the author has faithfully stated all the existing enactments and

decisions for the guidance of the several classes,—whether professional, public, or official,—who are interested in the subject, he has briefly and eloquently described the former state of the law, the objects of recent legislation, and the result of the changes which have been effected.

The Introduction gives an outline of the changes effected and proposed, during the 20 years commencing with 1832, in the parliamentary representation of the United Kingdom.

The following are the subjects of the several chapters:—

- I. Parliamentary Election Law of Scotland.
- II. Parliamentary Election Law of Ireland.
- III. England and Wales. The counties and boroughs of England and Wales, with the number of members respectively returned by each.
- IV. The county franchise.
- V. The borough franchise.
- VI. Registration.
- VII. Incapacities to elect.
- VIII. Qualifications and disqualifications for being elected.
- IX. The returning officer and the election.
- X. Votes thrown away by voters.
- XI. Interference — Intimidation — Violence.
- XII. Bribery.
- XIII. Treating.

The second part of the work comprises—  
1st. Acts relating to the election and summoning of the representative Peers of Scotland.

2nd. Acts relating to the election of members of the House of Commons for Scotland.

3rd. Acts relating to the election and summoning of the representative Peers of Ireland.

4th. Acts relating to the election of members to serve in the House of Commons for Ireland.

5th. The Acts relating to England and Wales, and the United Kingdom.

6th. Decisions of the Court of Common Pleas on Election Law, chronologically arranged to the present time.

7th. Reports to the House of Commons, by the Lords Chief Justices of the Common Pleas, of the above decisions.

8th. Table of disqualifications and non-disqualifications for Parliament.

9th. Forms.

10th. Sessional orders on disputed elections.

## 11th. Table of the duration of Parliaments.

Mr. Warren, in his introduction, ably describes the general scope of the provisions of the Reform Act, 2 W. 4, c. 45:—

“First, as to *Counties*. The ancient freehold franchise, in fee, and for life, and for lives, was to be retained, with superadded conditions and limitations, principally consisting of value in the case of freeholds for life, actual occupation, and possession for certain specified periods. But the distinguishing feature of the proposed county franchise, was the introduction of three great classes of voters, consisting of copyholders, customary tenants, tenants in ancient demesne, &c., of inheritance, or for life or lives; leaseholders, lessees, or assignees of leases of a term of 60 years, of 10*l.* yearly value; 20 years, if of 50*l.* yearly value; and the sublessees or assignees of underleases respectively of the yearly value of 10*l.* and 50*l.*: subject, as in the freehold franchise, to conditions as to length of possession; finally, occupying tenants, without reference to the length of time, at a yearly rent of 50*l.*, subject to a condition as to the length of time during which the occupation has continued.

“This was undoubtedly a large, liberal, prudent, and well-considered alteration and extension of the franchise.

“Secondly, as to *Cities and Boroughs*.

“The ancient rights were to be reserved, some of them in perpetuity, and others for a time only; but both under strict conditions. Those to be reserved in perpetuity were freeholders and burgage tenants, under certain conditions as to the length of possession and of residence; burgesses and freemen, and the freemen and liverymen of the city of London: but this class of reservations was to be subject to important restrictions, the chief relating to residence, and limiting the rights of burgesses and freemen to those derived from birth or servitude, excluding all *honorary* freemen or burgesses created subsequently to the 1st March, 1831. Those rights to be reserved for a time only, were inhabitant householders, inhabitants paying scot and lot, potwallers, &c.: subject to conditions as to residence, and a liability to total loss of the right in the event of two successive years’ omission from the register. The new borough franchise, and which constitutes one of the main distinguishing features of the Reform Act, was to be acquired by the occupation, within a borough, of a house and premises of the annual value of ten pounds, for 12 months, with conditions as to residence, being rated, and having paid the rate; and finally, the receipt of parochial relief, or disqualifying alms, within a twelve-month, was to disenfranchise all borough voters to be placed upon the register for the time being.”

Further on, the author thus adverts to the provisions for preventing improper practices at elections:—

“There was one feature of the proposed Bill, of immense and indisputable value: the

adoption of a system for extinguishing the sources of protracted expenditure at and after elections, and grievous difficulty in ascertaining the right to vote. Those familiar with the then existing mode of conducting elections, will easily credit this assertion made by Lord John Russell, that a single election in Yorkshire had been known to cost nearly 150,000*l.*; and that the mode of ascertaining the right to vote, at the time of the election, was extraordinarily objectionable in almost every way. To remedy this evil a scheme was proposed for calling into action, machinery like the Jury Act; for forming annually, by means of responsible parish officers and others, and the returning officer, lists of persons entitled to vote at any ensuing election: giving the greatest facilities for detecting and preventing fraud, and guaranteeing the honest ascertainment and exercise of the franchise. The right to vote was thus to be calmly and deliberately determined, irrespectively of impending elections, by competent functionaries, leaving nothing to be done at the poll but to vote, in the exercise of the long previously-scrutinised and authoritatively-ascertained right, subject to only the very reasonable inquiry as to identity, and the having already voted. Other arrangements also were proposed, for greatly shortening the duration of the poll, and facilitating voting. Such was to be the new mode of ascertaining and exercising the franchise; another great benefit attending it, being the effecting a corresponding simplification of the duties of election committees.”

We should have been tempted to abridge several parts of the chapters on intimidation, bribery, and treating, or to make extracts therefrom; but our limits forbid, and we must content ourselves with referring to the volume on these and other topics,—satisfied that, whether as candidates or members, or as agents, solicitors, or counsel, all who are interested in elections that may probably or possibly be contested, and all who are engaged in the conduct and management thereof, will avail themselves of this invaluable volume.

## LAW OF EVIDENCE.

## LEADING INTERROGATORY.—REJECTION OF PART OF THE WITNESS'S ANSWER.

ON the trial of a question whether the sale of a ship took place under such circumstances as to make the underwriters liable for a total loss, the evidence relied on consisted, exclusively, of the depositions of witnesses taken under a commission, on interrogatories.

The 31st interrogatory was as follows:—  
“What was the value of the ship at Masulipatam? [Was it best for the interest of

all parties concerned that she should be sold there? If so, state why and for what reason.”] The answer of one of the witnesses to this interrogatory was: “The deponent saith that he is at a loss to fix a value on a ship in that state at Masulipatam; [but he thinks the sale made of her was an advantageous one; that it was to the interest of all the parties concerned that the ship should be sold there; because] the ship required very extensive repairs, which could not be done there, there not being at Masulipatam workmen, timber, or forges.”

The plaintiffs' counsel proposed to put this interrogatory and answer in evidence. The defendants' counsel objected to the interrogatory, as being a leading question, and one which asked for the opinion of the witness on the very point which it was for the jury to decide. And they contended that the answer could not be divided, but must be totally suppressed.

The learned Judge was of opinion that part of the interrogatory was objectionable, but that both the question and answer were divisible. He ordered those portions of the question and answer which are above printed between brackets to be suppressed; and the interrogatory and answer were read to the jury as follows:—“What was the value of the ship at Masulipatam?” Answer:—“The deponent saith that he is at a loss to fix a value upon a ship in that state at Masulipatam. The ship required very extensive repairs, which could not be done there, there not being at Masulipatam workmen, timber, or forges.”

Another witness was examined under the same interrogatory; and his answer also was divided by the learned Judge in a similar manner. At the close of the trial the jury found several facts specially (which it is unnecessary to state, as the Court ultimately held that the finding was imperfect); and the Judge directed a verdict for the plaintiffs, giving the defendants leave to move to enter a verdict for them on the facts so found.

On a motion to enter the verdict for the defendant or for a new trial, Lord Denman, C. J., said—

“I think it necessary, without delay, to state our opinion, that an objection to a question as too leading does not, as a matter of law, make the answer to the question inadmissible. It is entirely in the discretion of the Court whether the question is such as to make the answer obtained by it objectionable. It certainly is to be regretted that there is, in practice, no opportunity for making the objection to a leading

interrogatory until the trial: but when the trial comes on, and the objection is made, I think the Judge should exercise a discretion. Here the part of the answer read to the jury was not objectionable in itself, and was divisible from the rest. I think the Judge did right in permitting it to be read.”

Mr. Justice Coleridge and Mr. Justice Wightman concurred in opinion, that if the question and the answer were divisible, the objectionable part might be rejected and the rest admitted. *Small v. Neirne*, 13 Q. B. 840.

## THE NEW PARLIAMENT.

### LAWYERS RETURNED.

- Adair, Hugh Edward, *Ipswich*.  
 Aglionby, Henry Aglionby, *Cockermouth*.  
 Armatrong, Rt. Baynes, Q. C., *Lancaster*.  
 Atherton, William, Q. C., *Durham (City)*.  
 Baines, Rt. Hon. Matthew Talbot, Q. C., *Leeds*.  
 Banks, Right Hon. George, *Dorsetshire*.  
 \*Barrow, Wm. Hodgson, *Nottinghamshire (S)*.  
 \*Benbow, John, *Dudley*.  
 Bethell, Richard, Q. C., *Aylesbury*.  
 Bouverie, Hon. Edward P., *Kilmarnock*.  
 \*Bremridge, Richard, *Barnstaple*.  
 Brockman, Edward Drake, *Hythe*.  
 Butt, George Medd, Q. C., *Weymouth*.  
 Butt, Isaac, *Youghall*.  
 Cabbell, Benjamin Bond, *Boston*.  
 Cairns, Hugh M'Calmont, *Belfast*.  
 Chambers, Montagu, Q. C., *Greenwich*.  
 Chambers, Thomas, *Hertford*.  
 Cobbett, John Morgan, *Oldham*.  
 \*Cobbold, John Chevallier, *Ipswich*.  
 Cockburn, Sir Alexander James Edmund, Q. C., *Southampton*.  
 Collier, Robert P., *Plymouth*.  
 Coles, Henry Beaumont, *Andover*.  
 Crowder, Richard Budden, Q. C., *Lisford*.  
 Ewart, William, *Dumfries (District)*.  
 Farrer, James, *Durham (South)*.  
 Fitzgerald, John D., Q. C., *Ennis*.  
 Follett, B. Spencer, Q. C., *Bridgewater*.  
 \*Freshfield, J. W., *Penryn and Falmouth*.  
 Gipps, H. P., *Canterbury*.  
 Gower, Hon. F. Leveson, *Stoke-on-Trent*.  
 Granger, Thos. Colpitts, Q. C., *Durham (City)*.  
 Grogan, Edward, *Dublin (City)*.  
 Hayter, Right Hon. Wm. Goodenough, Q. C., *Wells*.  
 Headlam, Thomas Emerson, *Newcastle-upon-Tyne*.  
 Hildyard, Robert Charles, Q. C., *Whitehaven*.  
 Hogg, Sir James Weir, Bart., *Homerton*.  
 Ingham, R., Q. C., *South Shields*.  
 Inglis, Sir Robert Harry, Bart., *Oxford (University)*.  
 Keating, H. S., Q. C., *Reading*.  
 Kelly, Sir Fitzroy, *Suffolk (East)*.  
 \*Laslett, Wm., *Worcester*.  
 \*Layard, Henry Austen, D.C.L., *Aylesbury*.  
 Lefevre, Right Hon. Charles Shaw, *Hants (North)*.  
 Lowe, Robert, *Kidderminster*.

Macaulay, Kenneth, Q. C., *Cambridge (Borough)*.  
 Macaulay, Rt. Hon. T. B., *Edinburgh (City)*.  
 Malins, Richard, Q. C., *Wallingford*.  
 Massey, W. N., *Newport*.  
 Mills, Arthur, *Taunton*.  
 Moncreiff, Rt. Hon. James, *Leith*.  
 \*Mullings, Joseph Randolph, *Cirencester*.  
 Murphy, Francis Slade, S. L., *Cork (City)*.  
 \*Murrough, John Patrick, *Bridport*.  
 \*Neeld, Joseph, *Chippenham*.  
 O'Connell, Manrice, *Tralee*.  
 Paull, Henry, *St. Ives*.  
 Peel, Frederick, *Bury (Lancashire)*.  
 Phillimore, J. G., Q. C., *Cheltenham*.  
 Phinn, Thomas, *Bath*.  
 Pugh, David, *Montgomery (District)*.  
 Roebuck, John Arthur, Q. C., *Sheffield*.  
 \*Sadleir, John, *Carlton (Borough)*.  
 Seymour, William Digby, *Sunderland*.  
 Stapleton, John, *Berwick*.  
 Stuart, John, Q. C., *Bury St. Edmunds*.  
 Tancred, Henry William, Q. C., *Banbury*.  
 Theisger, Sir Frederick, *Stamford*.  
 Villiers, Hon. C. P., *Wolverhampton*.  
 Vivian, John Ennis, *Truro*.  
 Walpole, Rt. Hon. Spencer Horatio, Q. C.,  
*Midhurst*.  
 Whiteide, Right Hon. James, Q. C., *Ennis-*  
*killen*.  
 Wigram, Loftus Tottenham, Q. C., *Cambridge*  
*(University)*.  
 Wood, Sir William Page, *Oxford (City)*.  
 Wortley, Rt. Hon. James Archibald Stuart,  
 Q. C., *Buteshire*.

#### UNSUCCESSFUL LEGAL CANDIDATES.

The following Law Members of the last Parliament have not been again returned:—

Anstey, Thomas Chisholm, *Bedford*.  
 Baldwin, Charles Barry, *Totness*.  
 Bernal, Ralph, *Rochester*.  
 Best, John, *Kidderminster*.  
 Bunbury, Edward Herbert, *Bury St. Edmunds*.  
 Butler, Pierce Somerset, *Kilkenny (County)*.  
 Cardwell, Edward, *Liverpool*.  
 Collins, Thomas, *Knarborough*.  
 Evans, John, Q. C., *Haverfordwest*, and  
*Pembroke (District)*.  
 Greene, Thomas, *Lancaster*.  
 Hardcastle, Joseph Alfred, *Colchester*.  
 Hobhouse, Thos. Benjamin, *Lincoln (City)*.  
 \*Hodgson, William Nicholson, *Carlisle*.  
 Lewis, George Cornewall, *Herefordshire*.  
 Nichol, Right Hon. John, D.C.L., *Cardiff*.  
 O'Brien, John, S. L., *Limerick (City)*.  
 O'Connell, Morgan John, *Kerry*.  
 Palmer, Roundell, Q. C., *Plymouth*.  
 Romilly, Right Hon. Sir John, *Devonport*.  
 Stanford, John Frederick, *Reading*.  
 Trelawny, John Salisbury, *Tavistock*.  
 Watson, William Henry, Q. C., *Newcastle-*  
*upon-Tyne*.

The following New Candidates have not been successful:—

Allen, Robert, S. L., *Stafford (Borough)*.  
 Bayford, Augustus Frederick, D.C.L.

Barnes, P. Edward, *Pewryn and Falmouth*.  
 Bovill, William, *Lewes*.  
 Cadogan, Hon. F., *Bridgnorth*.  
 Channell, W. F., S. L., *Beverley*.  
 Cleasby, A., *Surrey (East)*.  
 Cox, Edward William, *Tewkesbury*.  
 Escott, B., *Plymouth*.  
 Evans, Cooke, *Stafford (Borough)*.  
 Farsyde, G. J. W., *Whitby*.  
 Fenwick, Henry, *Sunderland*.  
 Follett, Robert B., *Lichfield*.  
 Gaslee, S., S. L., *Portsmouth*.  
 Greene, J. G. J., *Wilton*.  
 Horsman, Edward, *Cockermouth*.  
 Huddleston, J. W., *Worcester (City)*.  
 Kinderley, George Herbert, *Tralee*.  
 Kinglake, A. W., *Bridgewater*.  
 Kinglake, J. A., S. L., *Wells*.  
 Lee, John, L.L.D., *Buckinghamshire*.  
 Lewis, William David, *Pontefract*.  
 Liddell, Hon. A. F. O., *Gateshead*.  
 Loch, George, *Manchester*.  
 Locke, John, *Hastings*.  
 Mellor, J., Q. C., *Warwick (Borough)*.  
 Newton, Augustus, *Ripon*.  
 Overend, W., *Sheffield*.  
 Palmer, Geoffrey, *Leicester*.  
 Pashley, Robert, Q. C., *Lyme Regis*.  
 Phillimore, J. G., Q. C., *Cheltenham*.  
 Phillimore, Robt. Joseph, D.C.L., *Tavistock*.  
 Ridley, George, *Northumberland (South)*.  
 Robinson, Augustin, *(Shrewsbury)*.  
 Rolt, John, Q. C., *Bridport*.  
 Romaine, W. G., *Marlow (Great)*.  
 Slade, F. W., Q. C., *Dorchester*; and *Salis-*  
*bury*.  
 Smith, John Sidney, *Bodmin*.  
 Sturgeon, C., *Nottingham (Borough)*.  
 Whateley, William, Q. C., *Bath*.  
 Wilde, James, *Leicester*.  
 Wilkins, Charles, S. L., *Evesham*.  
 \*Wire, David Williams, *Greenwich*.

Those marked thus (\*), are or have been solicitors.

#### MASTERS EXTRAORDINARY IN CHANCERY.

ALL Masters Extraordinary in Chancery are requested to transmit to the Principal Secretary of the Lord Chancellor, Quality Court, Chancery Lane, on or before the last day of August next, a statement, in writing, mentioning their names, their place of residence, their actual occupation, and the date of their appointment.—From the *London Gazette*, of 16 July.

This Order has, no doubt, been made in reference to the Act abolishing the office of Master in Chancery. It is probable that in future the persons administering oaths will by a General Order receive their appointments as *Commissioners*, in the same way as in the Common Law Courts. The high-sounding name of "Master Extraordinary of the High Court of Chancery" will cease.

## NOTES OF THE WEEK.

## CERTIFICATE DUTY.—PROMISES OF CANDIDATES.

At the meeting of the electors of Cupar, Mr. Ellice, who has represented the borough for many years, was asked numerous questions, amongst others, by Mr. W. Taylor, Writer to the Signet, who first called the candidate's attention to the unfair and unjust tax on fire insurance, as a tax on prudence. Mr. Ellice's answer on this point was not very satisfactory; and Mr. Taylor then said,—“My next question is with regard to a tax affecting our own class. Mr. Ellice has stated his opinion that no class of the community should be taxed as a class. Writers are so taxed by requiring them first to pay 100*l.* of duty on admission to practise, and afterwards a tax of 8*l.* a-year. No other profession is similarly taxed. Barristers and ad-

vocates are exempt from such a tax; ministers pay no tax, except upon their presentation; doctors pay some 15*l.*, but they pay nothing annually. I have to ask if Mr. Ellice is prepared to say whether in principle he approves of this tax?”

Mr. Ellice—“There is a great deal to be said *pro* and *con* on the matter; but I was prepared to vote for the repeal of that tax if the question had been brought on this year. I believe the tax is in a fair way of being abolished. I rather think that an address for its abolition will be carried next year; but at all events I shall support any proposal for its abolition.”

It does not appear that any other of our brethren have publicly questioned their proposed representatives; but we trust, when canvassed for their “votes and interest,” the subject was not forgotten, and that early next Session we shall witness a satisfactory result.

## RECENT DECISIONS IN THE SUPERIOR COURTS.

## AND SHORT NOTES OF CASES.

## Lord Chancellor.

*In re Bannerman.* July 12, 1852.

## NEW TRUSTEE.—LUNATIC IN SCOTLAND.—EVIDENCE.

*Upon an application for the transfer of Bank stock which was invested in the names of four trustees, one of whom was dead and another stated by the affidavit to have been placed in a lunatic asylum under proceedings in a Sheriff's Court of Scotland:* Held, that it was necessary to show the trustee was now a lunatic as he might have been discharged from confinement.

THIS was an application for the transfer of a sum of 1,000*l.* Bank stock, which had been invested by the Incorporated Society of Advocates of Aberdeen in the year 1830, in the names of four trustees. The affidavit in support stated that one was dead and the other had been placed in a lunatic asylum under proceedings in one of the Sheriff's Courts.

*Rasch*, in support.

The Lord Chancellor said, it was necessary to show the trustee was still a lunatic, as he might have been discharged from confinement.

July 14, 15.—*Jones v. Price and another; Price v. Maclean*—Appeal dismissed from Vice-Chancellor Knight Bruce.

—16.—*Gibbon v. Fletcher*—Appeal from Vice-Chancellor Knight Bruce, dismissed with costs.

—17.—*Scrivenor v. Smith*—Appeal allowed from Vice-Chancellor Lord Cranworth.

—17.—*In re Fawcett's Patent*—Compromise agreed to.

—17, 19, 20.—*Monypenny v. Dering*—Appeal dismissed from Vice-Chancellor Knight Bruce.

—19, 20.—*McAlmont v. Rankin*—Part heard.

## Lords Justices.

*Moorhouse v. Colvin.* July 2, 1852.

## CONTRACT TO SETTLE MONEY ON DAUGHTER'S MARRIAGE, AND TO GIVE BEQUEST BY WILL.

By a letter, Dr. C. stated, that on his daughter's marriage 2,000*l.* should be settled on her, and that she should be noticed in his will. It appeared by a will she was entitled to a sum of 12,500*l.*, but Dr. C. afterwards revoked this will, and she took nothing under his last will: Held, dismissing an appeal from the Master of the Rolls, that there was no contract to settle anything beyond the 2,000*l.* on his daughter which this Court could enforce.

THIS was an appeal from the decision of the Master of the Rolls dismissing, on December 4 last, the plaintiff's bill in this suit. It appeared that the father of the appellant's wife, Dr. Cochran, who was a surgeon in the East India Company's service, had by his will, dated in December, 1818, bequeathed her a lac of rupees (12,500*l.*), but it appeared that in August, 1821, he revoked this will and made another by which he gave her a similar amount. It also appeared that in the year 1825 the testator wrote to Dr. Thomas, the friend who had charge of his daughter, that they might assure the young gentleman who might meet with their approbation, that on the marriage with her he should have 2,000*l.* sterling; “nor will that be all,—she is and shall be noticed in my will, but to what further amount I cannot say, owing to the present reduced and reducing state of interest, which puts it out of my power to determine at present what I may have to dispose of.” The plaintiff was informed of this letter and also of the will, and his marriage with the daughter took place in 1826, and in 1829 Dr. Cochran made a will in favour of other persons, with remainder to the daughter if they died without issue. The

plaintiff and his wife contended there was a contract to settle a lac of rupees upon the latter, and on the Master of the Rolls having dismissed their bill, this appeal was presented.

*Bethell and Toller* in support; *Willcock* and *W. Morris*, contra.

The *Lords Justices* said, the letter only amounted to a contract to settle 2,000*l.* on the marriage, and although it might also be a contract to give something more by will, that right could not be dealt with in this Court, although there might possibly be a right of action for nominal damages on nothing being given by the will. The appeal would therefore be dismissed.

July 16.—*Mitchell v. Beaumont*—Order of Master of the Rolls varied as to costs.

— 17.—*In re Field*—Order on petition for reference as to state of mind of *cestui que trust*.

— 17.—*Martin v. Pycroft*—Stand over.

— 17.—*Glasse v. Richardson*—Appeal from Vice-Chancellor Turner dismissed, with costs.

July 17.—*Exparte Hughes, in re Lord Dunsor*—Order approving of committees of lunatic.

— 17.—*Exparte Ansties, in re Ansties*—Part heard.

— 20.—*In re Metropolitan Railways' Company, ex parte Markwell*—Appeal allowed from Vice-Chancellor Parker.

— 20.—*In re Great Western Extension Atmospheric Railway Company, ex parte Wryghte*—Appeal from Master Senior dismissed, with costs.

— 20.—*In re Direct Exeter, Plymouth, and Devonport Railway Company*—Part heard.

#### Master of the Rolls.

July 14.—*Holtzapffel v. Chapman*—Injunction granted to restrain infringement of copyright.

— 14.—*Thurstons v. Smith*—Demurrer to supplemental bill allowed.

— 15.—*Page v. Dewdney*—Judgment on claim for plaintiffs.

— 17.—*Birch v. Jennings*—Stand over.

— 17.—*In re Horley's Trust*—Order for investment of trust fund under Lynch's Act without reference.

— 17.—*In re Guibert's Trust Estate*—Petition dismissed for appointment of trustees.

— 14, 16, 19.—*In re London Dock Company, ex parte Hyde and others*—Part heard.

— 19.—*Ellis v. Elliotts*—Decree for payment of legacy.

— 20.—*Cockle v. Bacon; Cockle v. Faus*—Injunction refused with costs.

#### Vice-Chancellor Turner.

*Wright v. West.* July 17, 1852.

TRUSTEES RELIEF ACT. — PAYMENT OF TRUST RUED INTO COURT PENDING SUIT. — COSTS.

Trustees paid money into Court, under the 10 & 11 Vict. c. 96, pending a suit against

them by the *cestuis que trustent*: Held, that they were liable to the costs thereby occasioned.

In this case the trustees had paid the trust funds into Court under the 10 & 11 Vict. c. 96, after the bill had been filed by the *cestuis que trustent* to carry into execution the trusts of a marriage settlement.

Sir *William Page Wood, Smythe, and Hare* for the several parties.

The Vice-Chancellor said, that as all doubt on the title of the *cestuis que trustent* had been removed, the trustees must bear the expense of paying the fund into Court,—such payment being after bill filed by the *cestuis que trustent* in the nature of a cross bill on their part. The act was intended for the indemnity of trustees, and the bill which had been filed would have given them the same indemnity it was their object to obtain under the Trustees' Relief Act, and the course they had adopted was therefore unnecessary and improper.

July 14.—*Graham v. Greaves*—Cur. ad. vult.

— 15.—*Hender v. Streeten*—Decree for specific performance of contract, without costs.

— 15.—*Barry v. Barry*—Decree for investment of trust funds.

— 17.—*Grievess v. Rawley*—Plaintiff held entitled to legacy.

— 20.—*Farina v. Leets*—Injunction granted.

— 20.—*Greene v. Fryer*—Order on motion to strike out name of next friend off the record.

#### Vice-Chancellor Kindersley.

July 14.—*Warwick v. Claussen*—Bill dismissed by arrangement between parties.

— 14.—*Harvey v. Stracey*—Cur. ad. vult.

— 15.—*Bower v. Johnson*—Decree for account.

— 16.—*Hobhouse v. Bland*—Order on petition sanctioning reduction of rate of interest on mortgage.

— 16.—*Evans v. Heath*—Reference back to the Master.

— 17.—*Mackenzie v. Mackenzie*—On petition, claim of assignees in bankruptcy disallowed.

— 19.—*Van v. Jackson*—Order on petition for sale of shares under marriage settlement to enable petitioners to proceed to Australia.

— 20.—*In re Galway and Ennis Junction Railway Company, ex parte Lord Lonsborough*—Judgment as to costs.

— 20.—*Harris v. Poyner*—Judgment on claim as to construction of will.

#### Vice-Chancellor Parker.

*Waite v. Coombes.* June 30; July 1, 1852.

WILL.—CONSTRUCTION.—“TAKE AND RECEIVE.”

A testator directed his executors appointed by his will, “to take and receive” all moneys which might be in his possession or due to him at the time of his decease, and to pay the interest arising therefrom to his wife

for life, and after her death to his nieces and their children: Held, on claim, that a sum of consols passed under the devise.

THE testator, Thomas Staning, by his will, appointed Mr. William Coombes and Mr. George Clode executors, "to take and receive all moneys that may be in my possession or due to me at the time of my decease, and to prosecute for the recovery of the same, if it be found necessary, to be by them placed in the British funds or otherwise laid out upon such security as they shall deem sufficient, the interest arising from which to be received and paid by them yearly or oftener, as appears best, unto my dear wife Caroline Staning, at this time living with me, for her sole use and benefit; but that only during her life, she having but a life interest in it," and he directed his executors, at her death, to divide equally between his two nieces, or to their children, or the child or children of either, supposing one of them not to have any family surviving, all such moneys held in trust by them, and which his nieces or their surviving children, at the death of his wife, "became by virtue of this my will entitled to in accordance with the wish already expressed by me." This claim was filed to obtain the judgment of the Court as to the construction of the will.

*Webster* for the plaintiffs; *Elderton, Drewry, and H. C. Jones* for the defendant.

*Cur. ad. vult.*

The Vice-Chancellor said, that the will disposed of the whole personal estate, and was sufficient to include a sum of consols standing in his name, referring to *Boys v. Morgan*, 3 Myl. & C. 661, and judgment must be for the plaintiffs.

July 14.—*Smith v. Gibbs*—Judgment on construction of will.

—14.—*Farrow v. Eastern Union Railway Company*—Order for specific performance of agreement for purchase of lands.

—14.—*Thompson v. Norris, Official Manager of Vale of Neath and South Wales Brewery Company*—Demurrer to bill overruled.

—16.—*Derbishire v. Home; Hoare v. Derbishire*—Judgment herein, and cross bill dismissed.

—19.—*Alcock v. Alcock*—Part heard.

—20.—*Great Northern Railway Company v. East and West India Docks and Birmingham Junction Railway Company*—Part heard.

#### Court of Queen's Bench.

*Wilkinson v. Anglo-Californian Gold Mining Company*. June 4, 1852.

JOINT-STOCK COMPANIES' REGISTRATION ACT. — DELIVERY OF CERTIFICATE TO SHAREHOLDER.—SIGNATURE OF DEED.

The directors of a company, completely registered, under the 7 & 8 Vict. c. 110, were held not liable to an action for the non-delivery, under sect. 51, of a certificate of shares to the plaintiff, where he had not

signed the deed in accordance with the proviso attaching to the word "shareholder," under the interpretation clause, and a demurrer was overruled to a plea setting up in answer to such action, that the plaintiff had not so signed the deed.

THIS was an action to recover for the non-delivery of a certificate of certain shares in this company to the plaintiff, and the plea justified, on the ground he had not signed the deed of settlement. The case now came on upon demurrer to this plea.

*Peterson*, for the plaintiff, in support.

*Willes*, for the defendants, contra, referred to the 7 & 8 Vict. c. 110, s. 51, which enacts, that "on demand of the holder of any share in any joint-stock company completely registered under this act, the company shall cause a certificate of the proprietorship of such share to be delivered to such shareholder specifying the share in the undertaking to which such shareholder is entitled, and the amount paid up in respect of such share at the date of such certificate, and shall have the common seal of the company affixed thereto," and by the interpretation clause (s. 3) the word "shareholder" was to mean, so far as such meaning was not excluded by the context or by the nature of the subject-matter, "any person entitled to a share in a company, and who has executed the deed of settlement, or a deed referring to it."

The Court said, that as there was no repugnancy to the word "shareholder," meaning a person who had signed the deed, the declaration was bad for not averring the plaintiff had so signed it, and the demurrer to the plea must be overruled.

#### Court of Common Pleas.

*Kelly v. Webster*. May 11, 1852.

AGREEMENT TO GIVE UP POSSESSION OF HOUSE.—STATUTE OF FRAUDS.

Held, on appeal from and reversing the decision of a County Court, that an agreement for the payment of a sum of money by the appellant to the respondent, who was interested in a house, upon his giving up possession of the same, was within the Statute of Frauds, and must be in writing.

*Udall* appeared in support of this appeal under the 13 & 14 Vict. c. 61, s. 14, from the Yorkshire County Court at Leeds. The plaintiff was entered to recover the sum of 49l. balance of 100l. which was agreed to be paid by the appellant for giving up possession of a house in which he was interested. The Judge had overruled an objection taken at the hearing, that as this was a sale of an interest in land there should have been an agreement in writing under the Statute of Frauds.

*Hall*, contra.

The Court allowed the objection, and the judgment of the Court below was accordingly reversed.

# The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

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SATURDAY, JULY 31, 1852.
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## CHANCERY PRACTICE AND PROCEEDING AMENDMENT ACT.

A LARGE portion of our last Number was occupied, to the inevitable exclusion of other matters, with the Act, which obtained the Royal Assent on the 1st instant, "to amend the Practice and course of Proceeding in the High Court of Chancery."

This Act does not come into operation until the 1st day of November next, but considering how much the old practitioners have to *unlearn*, as well as to learn, in consequence of its provisions, the leisure of the Long Vacation will hardly suffice to enable them to master its details, or to realise the extent and variety of the alterations about to be introduced in practice, under the authority of its enactments.

That it will be expedient for the Chancellor, as soon as may be, to exercise the power given to him, with the advice and assistance of the other Equity Judges, to make *General Rules and Orders* for carrying the purposes of the Act into effect, there can be little doubt; but as the Act provides (by sect. 64), that all General Rules and Orders of the Lord Chancellor, made with such advice and assistance, shall be laid before Parliament if sitting, and if not sitting within five days after its meeting, and may be rescinded by any resolution of either House of Parliament within 36 days, it has been stated that no such General Orders will be put in force until they have been submitted to Parliament for the specified period. It is not suggested, that orders may not be issued and directed to take effect without the express sanction of Parliament, leaving it to either House by resolution, to declare "that the whole or any part of such Rules or Orders ought not to continue in force:" but it is not impossible that the ordinary course will be pursued,

and the acquiescence of Parliament ascertained before the New Orders come into operation. If this supposition should prove correct, the Act 15 & 16 Vict. c. 86, will be in operation during the whole of Michaelmas Term, and practitioners will be compelled to put their own construction upon its novel provisions, without the light that may be derived from General Orders to be subsequently promulgated.<sup>1</sup>

The Act distinguishes between the power given to the Lord Chancellor, in conjunction with the other Equity Judges, in ordinary cases, and with respect to the new practice about to be established of substituting *printed Bills and Claims* for engrossments on parchment, and serving a copy of such Bill or Claim in lieu of a writ of subpoena or summons. The Lord Chancellor is empowered (by sect. 9), without consulting the Equity Judges, and without any reference to either House of Parliament, to make any order directing, the provisions as to printing to be discontinued or suspended, and the present practice as to filing Bills and Claims and the issue and service of writs of subpoena and summons to be revived and come into operation, as if this Act had not been passed.

The enactment by which the services of the law stationer are to be exchanged for those of the printer are sufficiently explicit as regards "Bills of Complaint and Claims." The practice of engrossing those on parchment for the purpose of filing is to be discontinued, and printed Bills or Claims filed instead; but to meet cases where urgency and secrecy might be interfered with by re-

<sup>1</sup> According to another rumour, the orders for carrying the Act into effect have been prepared and are now under the consideration of the Lord Chancellor and the other Equity Judges.



quiring printed bills, it is provided, that written copies shall be received of bills praying writs of injunction, or of *ne exeat regno*, or to make an infant a ward of Court, upon the personal undertaking of the plaintiff, or his solicitor, to file a printed bill within 14 days; and it is further provided, that the plaintiff shall be bound to deliver as many copies of the printed bill to the defendant, or his solicitor, as the latter may require, upon payment "at such rate as shall be prescribed by any general order of the Lord Chancellor in that behalf." The intention of the Legislature as to printing Bills and Claims can admit of no doubt, but the Act contains no provision from which it can be inferred that pleas, answers, or demurrers must or may be printed. It would seem reasonable that if a defendant thought proper to answer a printed bill by a printed answer, he might be at liberty so to do. Indeed, it would seem preferable if the rule as to printing instead of engrossing was confined to cases in which an alteration from the established practice would manifestly be attended by diminished expense. The new arrangement, though convenient perhaps to those who are troubled with failing sight, will be found in many instances to diminish the profits of the solicitor without affording any corresponding benefit to the suitor. When the number of copies of a written instrument is to be multiplied by hundreds, printing is less expensive than copying, but when the number of copies is to be reckoned by units the result of printing in an economical view is just the reverse.

As already intimated, the *Writ of Subpoena* to answer a Bill, and the *Writ of Summons* on a claim, are no longer to be used, but the defendant is to be served with a copy of the printed bill or claim, as the case may be, indorsed to appear within eight days after service, and with notice that if the party served neglects to appear, an order may be made against him.

The mode of *examining witnesses* in Equity, and the practice relating thereto, is materially altered by the new Act, but it is not proposed that witnesses should in general be examined before the Judge as in an action at law to be tried at Nisi Prius or on Circuit. If either party desires that the evidence to be adduced in a cause shall be taken orally, the witnesses are to be examined orally before an examiner, in the presence of the parties, their counsel, solicitors, or agents, and to be subject to cross-examination and re-examination, as nearly as may

be in the mode used in the Common Law Courts upon the examination of a witness about to go abroad and not expected to be present at the trial of a cause. The depositions of witnesses so taken are to be reduced to writing, ordinarily in a narrative form, and when completed to be read over to the witness and signed by him, precisely according to the practice which now prevails in the Court of Bankruptcy. Objections may be taken to any questions put, and such objections are to be noticed or referred to by the examiner, and he is to state and record his opinion thereon, but the examiner is not to "have power to decide upon the materiality or relevancy of any question or questions."

Although the evidence in a cause shall be taken orally, yet *affidavits*, by particular witnesses, or as to particular facts or circumstances, may, by consent, or by leave of the Court, be used on the hearing, with this qualification, that a witness who has made an affidavit shall be subject to oral cross-examination within a limited period, in the same manner as if the evidence given by him on affidavit had been given orally before the examiner, and he may be re-examined orally by the party by whom the affidavit was filed. There is also an express provision in the Act (sect. 39), empowering the Court, if it shall think fit so to do, upon the hearing of any cause, to require the production and oral examination *before itself* of any witness or party in the cause.

When the examinations are concluded, the original depositions are to be transmitted to the Record Office and filed, and any party to the suit may have a copy thereof, or of any part thereof, upon payment. On the whole, it appears to be generally conceded that the proposed mode of taking evidence in Equity is an unquestionable improvement upon the existing practice.

The alterations introduced by the Act in the form and framework of *Equity pleadings* are not insignificant. The bill is to contain a concise narrative of the facts or circumstances upon which the plaintiff relies, and a prayer for specific and general relief, but *without interrogatories* for the examination of the defendant. If the plaintiff commencing a suit by bill requires an answer from any defendant, he is to file, in the Record Office, *interrogatories* for the examination of the defendant or defendants from whom he shall require an answer, and deliver to such defendants, or their solicitor, a copy of such interrogatories, or of such of

them as shall be applicable to the particular defendant. The defendant's answer may contain, not only his answer to the interrogatories so filed, but such statements material to the case as the defendant may think it necessary or advisable to set forth therein. After a defendant puts in an answer to a bill, he is at liberty, without filing any cross-bill, to file in the Record Office interrogatories for the examination of the plaintiff, prefaced by a concise statement of the subjects on which a discovery is sought, and the plaintiff upon the delivery of a copy of such interrogatories to him or his solicitor, will be bound to answer in the same manner as if the interrogatories were contained in a bill of discovery.

With regard to bills, answers, and affidavits, it is expressly required, that they shall be respectively divided into *paragraphs numbered consecutively*, each paragraph containing as nearly as may be a separate and distinct statement or allegation, an arrangement which, it is expected, will afford great and useful facilities for reference in complicated cases, where the pleadings necessarily run to a considerable length.

The regulations introduced by the new Act as to swearing and taking pleas, answers, disclaimers, examinations, affidavits, declarations, affirmations, and attestations of honour, in causes depending in Chancery, are of the simplest and most comprehensive character. These, as well as acknowledgments for the purpose of enrolling any deed, may be sworn and taken in any place under the dominion of her Majesty, before any Judge, Court, notary public, or person lawfully authorised to administer oaths in such places; and in foreign parts, out of her Majesty's dominions, before any of her Majesty's Consuls or Vice-Consuls.

After the time allowed for answering shall expire, but before replication, the plaintiff, upon notice, may move the Court, for such *decree or decretal order* as he may think himself entitled to; and plaintiff and defendant respectively are to be at liberty to file affidavits in support of and in opposition to the motion, the answer if filed to be treated as an affidavit, and upon the hearing of such motion, it is to be discretionary with the Court, to grant or refuse the motion, or to make an order for the further prosecution of the suit, as circumstances may require.

The rules contained in the Act, regulating the law and practice of the Court, in reference to objections for want of parties, and in administration, creditors, and foreclosure suits, will be more conveniently treated of in a future Number.

## THE ATTORNEYS' CERTIFICATE DUTY AND THE TIMES.

In the *Times* of Monday last, the 26th July, in a leading article on the Middlesex Election, in reply to Lord Robert Grosvenor's remarks on the opinion expressed by one of their writers, that his Lordship, in a great degree, owed his election to the influence of the Grosvenor Family, the following passage appears:—

"We fully believe that Lord Robert Grosvenor considers that his constituents have a will of their own, for we cannot account in any other way for his annual perseverance in the attempt to repeal that *most just and reasonable tax*, the duty on Attorneys' Certificates."

Why the tax is "just and reasonable" the writer does not condescend to state. Yet the other successful candidate for the Metropolitan County, who has been so much praised in the same journal, contended with great ability for *fair and equal* taxation, and against the imposition of burthens on any *class* of the community. Now, where is the justice of annually taxing one only of the two branches of the Legal Profession, and not taxing at all any other Profession? It is true that a few trades are also annually taxed; but they serve no articles or apprenticeship, and pay no duty of 120*l.* and 25*l.* on commencing their business. Besides, some of them have actual pecuniary privileges in return for their annual payments: the bankers may give receipts on unstamped paper, and the pawnbrokers charge a larger interest than the ordinary rate. The attorneys pay a *three-fold* tax. They ask only to be relieved of one.

So much for the "justice" of the tax. Then as to its "reasonableness." How can it be reasonable to tax persons whose professional practice yields them only a hundred a year or less, to the same amount as those who receive a thousand or more?

But it is unnecessary to argue the question. In all the debates which ended in five successful divisions, the Chancellor of the Exchequer never attempted to uphold the tax on grounds of reason or justice. He said only that it had long existed, and that he could not spare it, especially as the repeal of other taxes, which he erroneously alleged to be similar, must then also be relinquished. This, however, need not follow, for some of the other classes wish to retain the annual assessment as a protection against

a host of competitors who would spring up if their trade were entirely free. After all, the infliction of one wrong cannot justify another.

## COUNTY COURT ADVOCACY.

THE *Law Times*, in support of the proposition, that the Act 15 & 16 Vict. c. 54, s. 10, which restricts an attorney retained as an advocate by another attorney from acting in the County Courts, does not make a new law but merely *confirms* the law previously existing, refers us to a dictum of Lord Campbell, in the case of *Regina v. Amos*. We do not forget the observation which the newspaper reports ascribed to Lord Campbell in the case referred to, but our readers will probably remember that the case of the *Queen v. Amos* was an application for a criminal information against a Judge of the County Court, and that the *only* question the Court was called upon to decide, and did in fact decide, in that case was, whether Mr. Amos had been guilty of corrupt misconduct in his office?—a question, it is but right to add, the Court unhesitatingly decided in the negative. That decision proceeded upon the facts, and involved no principle of law, a circumstance which probably accounts for the case not being reported in the recognised reports of the Court of Queen's Bench.

As to the argument, with which our learned contemporary has favoured us, founded on the maxim of the Common Law, *Delegata potestas non potest delegari*, we confess ourselves incapable of understanding its applicability to the matter in question. We thought the authority of an attorney to employ an agent for certain necessary purposes was implied, in the same manner as a factor may employ an auctioneer to sell goods by auction, or a master of a foreign ship employ a ship-broker to procure a freight. If the attorney is not at liberty to employ an agent, by virtue of his implied authority, he is equally acting beyond the scope of his authority when he retains a counsel? The argument, if it has any force, must be carried much farther than our contemporary desires to push it. If the retainer of an attorney involves nothing more than a mere personal trust, the appointment of an agent and the instructions to a counsel are alike unauthorised acts.

## NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

### SUITORS IN CHANCERY RELIEF.

15 & 16 VICT. c. 87.

No officer hereafter to receive fees for his own use, but all officers to be paid by salary; s. 1.

Officers to continue to receive fees until Lord Chancellor shall otherwise direct, and pay them into the Suitors' Fee Fund; s. 2.

Officers not to take gratuities; s. 3.

How offenders to be prosecuted; s. 4.

Allowances for copying to cease, and power to Lord Chancellor to make regulations as to copies; s. 5.

Power to Lord Chancellor, by order, to vary, reduce, and abolish fees, and to provide for their collection by stamps; s. 6.

After such order, fees not to be received in money, but by means of stamps; s. 7.

Commissioners of Inland Revenue to give the necessary directions as to the stamps, to keep separate accounts, and pay monies into Suitors' Fee Fund; s. 8.

Provision for sale of stamps by officers of the Court, whose duties are diminished; s. 9.

Commissioners of Inland Revenue may make regulations as to the allowance for spoiled stamps; s. 10.

Provisions of former Acts relating to stamps to be applicable to stamps under this Act; s. 11.

No document to be received or used unless stamped. Proviso for subsequent stamping in case of mistake; s. 12.

Officers guilty of fraud or wilful neglect in relation to stamps, liable to be dismissed; s. 13.

Power to abolish fees in lunacy, and to substitute a per-centage in lieu thereof; s. 14.

Certain statutory jurisdiction given to Lord Chancellor, intrusted with care of lunatics, to be exercised by the persons for the time being so intrusted; s. 15.

Salaries of Lord Chancellor and Judges of the Court of Chancery to be paid out of Consolidated Fund; s. 16.

Repeal of section 61 of 5 & 6 Vict. c. 5, as to payment of 150*l.*; s. 17.

Brokerage heretofore received by Accountant-General to be paid by him into Suitors' Fee Fund; s. 18.

Salary of 2,700*l.* to be paid to present Accountant-General in lieu of brokerage, in addition to present salary &c.; s. 19.

Nothing in Act to affect the rights of the Accountant-General as a Master in Ordinary; s. 20.

Power to Treasury to make regulations as to brokerage; s. 21.

Salary of all future Accountants-General to be 3,000*l.* per annum; s. 22.

Certain officers of Lord Chancellor removed, and their offices abolished, viz.:—clerks of hanaper, secretary of decrees, one gent. of chamber, chaff wax and sealer, &c.; s. 23.

Certain officers of the Lord Chancellor to be paid by salary in lieu of fees, viz.:—Secretary, gentleman of chamber, purse-bearer, and trainbearer. Salary of clerk to Lord Chancellor's principal secretary not to exceed 250*l.*; s. 24.

The secretary of presentations and the secretary of commissions of the peace to account for and pay fees into Consolidated Fund; s. 25.

The persons or person holding such last-mentioned offices to receive the yearly sum of 800*l.*; s. 26.

Certain offices abolished, viz.:—subpcena office, clerks of affidavits and reports, door-keeper, erier, and usher; s. 27.

Duties of subpcena office transferred to clerk of records and writs; s. 28.

Duties of affidavit office to be performed by clerks of records and writs; s. 29.

Orders in lunacy, when drawn up and signed, to be entered by the registrar in lunacy, and office copies of such orders to be furnished and signed by him, and the Accountant-General to act upon such orders; s. 30.

Orders in lunacy in certain cases to be acted upon in the same manner as if drawn up by the registrar of the Court of Chancery; s. 31.

Certificates and reports of masters in lunacy to be only filed in the office of registrar in lunacy; s. 32.

Forging the signature of registrar of lunacy, or of his seal, to be felony; s. 33.

Master of reports and entries to counter-sign cheques, &c.; s. 34.

To perform other duties as Lord Chancellor may direct; s. 35.

Account of monies of the suitors of the Court kept at the report office to be discontinued, and offices of clerks of accounts abolished; s. 36.

Lord Chancellor to make general orders for carrying Act into effect; s. 37.

Orders under this Act may be varied; s. 38.

Duties and salaries of clerks in Accountant-General's office; s. 39.

Amount of salaries to clerks of Taxing Masters increased to 350*l.*; s. 40.

Deposits on appeals to be paid into bank, and placed to "The Appeal Deposit Account;" s. 41.

Persons may sell by auction, under an order of the Court of Chancery, without being liable to duty imposed by 8 & 9 Vict. c. 15; s. 42.

Indemnity in respect of former sales; s. 43.

Officers whose emoluments are diminished in consequence of this Act may make claim for compensation to Commissioners of Treasury; s. 44.

Payments to be made to persons whose offices are abolished; s. 45.

Lord Chancellor may order pensions for retiring officers. 5 & 6 Vict. c. 103. 4 & 5 W. 4, c. 24; s. 46.

Lord Chancellor may remove and give pensions to disabled officers; s. 47.

Salaries to grow due from day to day, but to be payable quarterly out of Suitors' Fee Fund; s. 48.

Compensation to hanaper, chaff wax, &c., to be paid out of Consolidated Fund; s. 49.

All other compensations and superannuation or retiring allowances to grow due from day to day, but to be payable quarterly out of Suitors' Fund; s. 50.

Alterations of quarterly days of payment of certain salaries out of Suitors' Fee Fund; s. 51.

Provisions for expenses of the officers of the Court. Salary of clerks to secretary at the Rolls not to exceed 300*l.*; s. 52.

Surplus of Suitors' Fund to be from time to time carried over to and to become part of Suitors' Fee Fund; s. 53.

Provision in case of surplus or deficiency of Suitors' Fee Fund; s. 54.

Interpretation of term "Lord Chancellor;" s. 55.

The following are the sections of the Act:—

An Act for the Relief of the Suitors of the High Court of Chancery. [1st July, 1852.]

Whereas several of the officers of the Court of Chancery have from time to time received and do now receive for their own use various fees and emoluments for business done and transacted by them in or by virtue of their respective offices: And whereas it is expedient that such officers should not henceforth retain such fees and emoluments for their own use, but that they should receive adequate salaries for the performance of their respective duties: And whereas it is expedient that for the relief of the suitors of the said Court further provision should be made with respect to the fees now payable by them, and that increased fe-

cilities should be afforded for the despatch of the business of the said Court, and that certain offices connected with the said Court should be abolished: Be it therefore enacted as follows:—

1. From and after the 28th day of October, 1852, no officer of the Court of Chancery or any of the Judges thereof shall be entitled to receive and retain for his own use any fee or reward whatsoever, and all officers of the Court of Chancery and of the Judges thereof now entitled to receive and retain any fees or other payments for their own use, which by virtue of this Act they will cease so to receive after the 28th day of October, 1852, and whose salaries are not fixed by this Act, shall, while they continue to hold their respective offices, receive in lieu of all fees or other payments whatsoever now received by or paid or payable to them for their own use such salary as, having regard to the emoluments heretofore received by them, and to the nature and tenure of such offices, the Commissioners of her Majesty's Treasury shall think just, and upon the present holders of such offices respectively ceasing to hold the same the Commissioners of her Majesty's Treasury shall fix the salaries to be thereafter received in respect thereof with reference to the nature and duties of such offices respectively.

2. It shall be lawful for all officers of the Court of Chancery and of the Judges thereof heretofore entitled to receive any fees or emoluments for their own use, and for their successors in their respective offices, and their several and respective clerks or agents, to continue to receive and take all and every the fees and emoluments which have been accustomed to be paid to them, until the Lord Chancellor shall by any order or orders otherwise direct, and all such fees and emoluments as shall accrue and be received by such officers respectively, from and after the 28th day of October, 1852, shall be accounted for and paid by them respectively once in every month into the Bank of England, in the name of the Accountant-General of the Court of Chancery, to be placed to the account there, intituled "The Suitors' Fee Fund Account," the amount so received and paid by such officers respectively to be verified by the affidavit of the accounting party.

3. From and after the 28th day of October, 1852, if any officer of the Court of Chancery or of any of the Judges thereof shall, for anything done or pretended to be done relating to his office, situation, or employment, or under colour of doing anything relating to his office, situation, or employment, wilfully take, demand, receive, or accept, or appoint or allow any person whatsoever to take for him or on his account, or for or on account of any person, by him named, any fee, gift, gratuity, or emolument, or anything of value, other than his salary and what is allowed or directed to be taken by him under this Act or any order to be made under this Act, the person so offending, when duly convicted, shall forfeit and pay the sum of 500*l.*, and shall be removed from any office, situation, or employment he may hold

in the said Court, and shall be rendered and he is hereby rendered incapable for ever thereafter of holding any office, situation, or employment in the said Court, or otherwise serving her Majesty, her heirs or successors.

4. Any such offender may be prosecuted either by information at the suit of her Majesty's Attorney-General, or by criminal information before her Majesty's Court of Queen's Bench, or by indictment.

5. From and after the 28th day of October, 1852, the several allowances for copying provided for and directed to be paid to the clerk of reports, the clerks of entries, the assistant clerk of affidavits, the clerks of the examiners, and the copying or writing clerks of the Masters in Ordinary of the said Court, by any Act or Acts of Parliament now in force, shall cease; and it shall be lawful for the Lord Chancellor, by any order or orders to be from time to time made by him, to make such regulations as to the making and delivering copies of the pleadings and other proceedings in the said Court, and of the documents relating thereto, and the manner in which such copies should be paid for, and the amount of charge for the same, and by whom the amount to be so charged should be received, as may from time to time seem expedient.

6. It shall be lawful for the Lord Chancellor, by any order or orders to be from time to time made by him, to vary, reduce, or abolish all or any of the fees payable in relation to proceedings in the Court of Chancery, and to substitute one or more fee or fees in lieu thereof, and to direct that all or any of such fees shall, from a day to be named in such order or orders and thenceforth, be collected by means of stamps to be provided and used in manner hereinafter mentioned.

7. From and after the day named in such order or orders, unless and until the Lord Chancellor shall otherwise direct, none of the fees mentioned in such orders respectively shall be received in money, but by a stamp denoting the amount of the fee which otherwise would be payable; and where any fee shall be payable in respect of any document such stamp shall, at the expense of the party liable to pay the fee, and in such manner and under such regulations as shall by any order or orders be directed, be stamped or affixed on the vellum, parchment, or paper on which the proceeding in respect whereof such fee is payable is written, printed, or engrossed, or which may be otherwise used in reference to such proceeding.

8. The Commissioners of Inland Revenue shall from time to time, upon the receipt of any order of the Lord Chancellor in that behalf, give the necessary directions for carrying the same into effect, and shall provide everything that is requisite for that purpose, and shall do or cause to be done everything that is necessary for the receipt and collection of the money to be paid for such stamps; and the said Commissioners shall cause separate and distinct accounts to be kept of all sums of

money received or collected by them under the provisions of any such order or orders, and of all costs, charges, and expenses incurred by them or by their direction in carrying the same into effect, and it shall be lawful for the said Commissioners to pay and to deduct and retain out of such monies all such costs, charges, and expenses, and also to deduct all sums of money repaid on allowances for spoiled stamps, as hereinafter provided for; and after such deduction they shall from time to time, and in such manner as the Lord Chancellor shall by any order direct, pay the monies so to be received and collected into the Bank of England to the credit of the Accountant-General of the Court of Chancery, to be placed to the account there, intituled "The Suits' Fee Fund Account."

9. It shall be lawful for the Lord Chancellor to direct any of the officers of the Court of Chancery whose duties may be diminished in consequence of the substitution of stamps for money payments, or otherwise, under this Act, to act under the directions of the Commissioners of Inland Revenue in the sale and distribution of all or any of the stamps to be used under this Act: Provided always, that in case it appear to the Lord Chancellor, having reference to the duties to be performed by such officers or any of them, that it is not convenient that they should act as aforesaid in the sale and distribution of stamps, it shall be lawful for the Commissioners of Inland Revenue to appoint persons for such sale and distribution, and to allow to such persons so appointed by them such discount or poundage as they may think fit.

10. It shall be lawful for the Commissioners of Inland Revenue from time to time to make such regulations as they shall think fit for the allowance of such stamps, issued under the provisions of this Act, as may have been spoiled or rendered useless or unfit for the purpose intended, or for which the owner may have no immediate use, or which through mistake or inadvertence may have been improperly or unnecessarily used, and such allowance shall be made either by giving other stamps in lieu of the stamps so allowed, or by repaying the amount or value to the owner or holder thereof, after deducting the discount or poundage (if any) allowed on the sale of stamps of the like kind.

11. The provisions contained in the several Acts for the time being in force relating to stamps under the care or management of the Commissioners of Inland Revenue shall (so far as the same are applicable and consistent with the provisions of this Act), in all cases not hereby expressly provided for, be of full force and effect with respect to the stamps to be provided under or by virtue of this Act, and to the vellum, parchment, or paper on or to which the same stamps shall be impressed or affixed, and be applied and put in execution for collecting and securing the sums of money denoted thereby, and for preventing, detecting, and punishing all frauds, forgeries, and other

offences relating thereto, as fully and effectually to all intents and purposes as if such provisions had been herein repeated and specially enacted with reference to the said last-mentioned stamps and sums of money respectively.

12. No document which by any order or orders to be respectively made as aforesaid shall be required to have a stamp impressed thereon or affixed thereto, shall be received or filed, or be used in relation to any proceeding in the Court of Chancery, or be of any validity for any purpose whatsoever, unless or until the same shall have a stamp impressed thereon or affixed thereto, in the manner directed by such order: Provided always, that if at any time it shall appear that any such document which ought to have had a stamp impressed thereon or affixed thereto has, through mistake or inadvertence, been received or filed or used without having such stamp impressed thereon or affixed thereto, it shall be lawful for the Lord Chancellor, if he think fit, to order that such stamp shall be impressed thereon or affixed thereto, and thereupon, when a stamp shall have been impressed on such document or affixed thereto, in compliance with any such order, such document, and every proceeding in reference thereto, shall be as valid and effectual as if such stamp had been impressed thereon or affixed thereto in the first instance.

13. If any officer of the Court of Chancery or other person shall do or commit or connive at any fraudulent act or practice in relation to any stamp to be used under the provisions of this Act, or to any fee or sum of money to be collected or which ought to be collected by means of any such stamp, or if any such officer or person shall be guilty of any wilful act, neglect, or omission in relation to any, such stamp or fee as aforesaid, whereby any fee or sum of money which ought to be collected for the benefit of the said Fee Fund shall be lost to the said Fee Fund, or the payment thereof evaded, every such officer or person so offending shall be dismissed from his office or employment, if the Lord Chancellor shall think fit so to order.

14. It shall be lawful for the Lord Chancellor, intrusted by virtue of the Queen's Sign Manual with the care and commitment of the custody of the persons and estates of persons found idiot, lunatic, or of unsound mind, by any order or orders, to be from time to time made by the Lord Chancellor, intrusted as aforesaid, to abolish all or any of the fees payable in relation to proceedings in lunacy, and to direct that such of the fees as shall not be abolished, if any, shall be collected by means of stamps in the manner hereinbefore provided with respect to fees payable in relation to proceedings in the Court of Chancery, and also to direct that in lieu of all or any of such fees a per-centage or *ad valorem* payment shall be paid on the clear annual incomes of the persons found idiot, lunatic, or of unsound mind, and on the amount of the taxed costs incurred in proceedings in lunacy, or on such annual incomes only, or on the amount of such taxed

costs only, the amount of such annual incomes as aforesaid, and the amount of the per-centage or *ad valorem* payment to be paid thereon and on such taxed costs to be from time to time ascertained and fixed in such manner, by such means, and under such regulations as the Lord Chancellor, intrusted as aforesaid, shall by any order or orders direct, and the amount of such per-centage or *ad valorem* payment to be paid into the Bank of England in the name of the Accountant-General of the Court of Chancery, to be placed to the account there, intituled "The Suitors' Fee Fund Account," at such times and by such persons as the Lord Chancellor, intrusted as aforesaid, shall by any order or orders direct: Provided always, that the amount to be raised by such per-centage or *ad valorem* payment shall not exceed the amount which may from time to time be required to provide for the payment of the salaries, expenses, and sums of money payable under the Act of the Session holden in the 5 & 6 Vict. c. 84, or any other Acts or Act of Parliament for the time being in force with respect to lunatics; and that a statement of the amount of such per-centage or *ad valorem* payment shall from time to time, within 14 days next after the same shall have been settled, be laid on the table of the House of Commons, if Parliament shall be then assembled, or if Parliament shall not be then assembled, then within 14 days after the meeting of Parliament then next following.

15. All the jurisdiction, and all the powers and authorities of a judicial nature, given by the Act of the Session holden in the 1 Will. 4, c. 65, by "The Trustee Act, 1850," and by any other Acts or Act of Parliament now in force, to the Lord Chancellor, intrusted by virtue of the Queen's Sign Manual with the care and commitment of the custody of the persons and estates of the persons found idiot, lunatic, or of unsound mind, shall belong to and may be exercised by all or any of the persons or person for the time being intrusted as aforesaid.

16. And whereas under certain Acts of Parliament now in force the salaries of the Master of the Rolls, and of the Vice-Chancellor appointed under the Act of the Session holden in the 53 Geo. 3, c. 24, are payable out of and charged upon the Consolidated Fund of the United Kingdom, but the salary of the Lord Chancellor (except that portion thereof payable to him as Speaker of the House of Lords), and the salaries of the Lords Justices of the Court of Appeal in Chancery, and of the other Vice-Chancellors, are payable out of the interest and dividends arising from the government or parliamentary securities placed in the name of the Accountant-General of the Court of Chancery which have been purchased from time to time with monies taken out of the common and general cash belonging to the Suitors of the Court of Chancery, and lying dead and unemployed in the Bank of England: And whereas it is expedient that the salaries of all the Judges of the Court of Chancery should be

paid out of the Consolidated Fund of the United Kingdom, instead of out of the interest of the securities purchased with the cash of the suitors as aforesaid: Be it therefore enacted, That from and after the 10th day of October, 1852, there shall be issued and paid and payable out of and charged and chargeable upon the Consolidated Fund of the United Kingdom, after paying or reserving sufficient to pay all such sums of money as by any Acts of Parliament now in force have been directed to be paid thereout, but with precedence to all other payments which shall hereafter be charged thereupon, the annual salaries hereinafter mentioned; that is to say, to the Lord Chancellor such yearly sum as, with the salary or sum payable to him as Speaker of the House of Lords, to be certified as directed by the Act of the Session holden in the 14 & 15 Vict. c. 83, shall be sufficient to make up the net yearly sum of 10,000*l.*; to each of the Lords Justices of the Court of Appeal in Chancery, 6,000*l.*; to the Vice-Chancellor for the time being appointed under the Act passed in the 5 Vict. Sess. 1, c. 5, 5,000*l.*; and to the Vice-Chancellor appointed under the Act of the Session holden in the 14 & 15 Vict. c. 4, 5,000*l.*; all of which salaries shall be in lieu of all salaries theretofore payable to such Judges respectively, out of any fund whatsoever, under any Acts or Act of Parliament now in force, and shall be payable and paid quarterly, free and clear from all taxes and deductions whatsoever, on the four usual days of payment in the year; that is to say, the 5th day of January, the 5th day of April, the 5th day of July, and the 10th day of October in every year, by equal portions, the first payment to be made on the 5th day of January, 1853, and a proportionate part of such salaries respectively to be paid for the quarter current at the death or resignation of any of the persons in the receipt of such salaries.

17. So much of the Act of the first Session holden in the 5 Vict. c. 5, as enacts, that the Accountant-General of the High Court of Chancery shall, on or before the 1st day of September in every year, pay into the bank, to an account, intituled "An Account of Interest arising from Securities carried to an Account of Money placed out for the Benefit and better Security of the Suitors of the High Court of Chancery," the sum of 150*l.*, shall be repealed.

18. From and after the 28th day of October, 1852, the brokerage which shall or may from time to time be received by the present Accountant-General of the Court of Chancery shall be paid by him into the Bank of England, to be there placed to his credit as such Accountant-General to the account, intituled "The Suitors' Fee Fund Account," at such times and under such regulations as the Lord Chancellor shall from time to time by any order direct.

19. From and after the 29th day of October, 1852, there shall be paid to the present Accountant-General of the Court of Chancery, in lieu of the brokerage heretofore received by him for his own benefit, and in addition to the

salary and allowance for books and stationery now received by him as Accountant-General, the net yearly salary of 2,700*l*.

20. Nothing herein contained shall affect the rights, privileges, or duties to which the present Accountant-General is entitled or which he is liable to perform as one of the Masters in Ordinary of the Court of Chancery.

21. It shall be lawful for the Commissioners of her Majesty's Treasury to make such regulations with respect to the broker to be employed in transacting the business relating to the funds of the Court of Chancery, and the amount of commission to be received by such broker, or the payment of such broker by salary or otherwise, as they shall from time to time think fit.

22. From and after the resignation or death of the present Accountant-General the salary provided for the Accountant-General of the said Court by the Act of the Session holden in the 12 Geo. 2, c. 24, and the Act of the Session holden in the 9 Geo. 3, c. 19, shall cease, and there shall be paid to the Accountant-General of the said Court for the time being the net yearly salary of 3,000*l*.

23. From and after the 28th day of October, 1852, the following officers shall be removed, and their respective offices shall cease and determine; that is to say, the keeper or clerk of her Majesty's hanaper, deputy clerk of the hanaper, the secretary of decrees and injunctions, one of the two gentlemen of the chamber attending the Great Seal, the chaff wax, the deputy chaff wax, the sealer, and the deputy sealer, and the duties theretofore performed by the secretary of decrees and injunctions shall thenceforth be performed by the clerks of records and writs, and the respective duties of the offices of the keeper or clerk of her Majesty's hanaper and of chaff wax and sealer shall thenceforth be performed by the clerk of the Crown in Chancery and the pursebearer to the Lord Chancellor respectively, as directed by the Act of the Session holden in the 3 & 4 Will. 4, c. 84, upon such offices becoming vacant by the death, resignation, or removal of the then respective holders thereof, and such pursebearer shall be thenceforth entitled to such yearly sums for the expenses of the offices of chaff wax and sealer as are by the said last-mentioned Act directed to be paid to him.

24. From and after the 28th day of October, 1852, there shall be paid to the officers of the Lord Chancellor next hereinafter named, in lieu of all fees heretofore received by them respectively for their own use, the following yearly salaries; that is to say, to the principal secretary of the Lord Chancellor 1,200*l*., to the gentleman of the chamber attending the Great Seal 500*l*., to the pursebearer to the Lord Chancellor 500*l*., and to the trainbearer to the Lord Chancellor 200*l*.; and it shall be lawful for the Lord Chancellor to appoint a clerk to be employed in the office of such principal secretary, which clerk shall receive by way of salary such annual sum, not exceeding 200*l*.,

as the Lord Chancellor shall from time to time direct.

25. From and after the 10th day of October, 1852, the persons or person holding the offices of secretary of presentations and secretary of commissions of the peace shall account for all the fees and emoluments payable to and received by them or him by virtue of such offices, and shall pay such fees and emoluments once in every six months into the receipt of her Majesty's Exchequer, and the same, when so paid, shall be carried to and made part of the Consolidated Fund of the United Kingdom, the amount so received and paid to be verified by the affidavit of the accounting party.

26. From and after the 10th day of October, 1852, there shall be paid to the persons or person for the time being holding such last-mentioned offices the yearly sum of 800*l*., to be divided between such persons, in case such offices should be held by different persons, in such proportions as the Lord Chancellor shall direct, and such yearly sum shall be issued and paid and payable out of and be charged and chargeable upon the Consolidated Fund of the United Kingdom (after paying or reserving sufficient to pay all such sums of money as by any Acts of Parliament now in force have been directed to be paid thereout, but with precedence to all other payments which shall hereafter be charged thereupon), and shall be payable and paid quarterly, free and clear from all taxes and deductions whatsoever, on the four usual days of payment in the year; that is to say, the 5th day of January, the 5th day of April, the 5th day of July, and the 10th day of October in every year, by equal portions, the first payment to be made on the 5th day of January, 1853, and a proportionate part thereof to be paid for the quarter current at the death or resignation of the persons or person in the receipt of such yearly sum.

27. From and after the 28th day of October, 1852, the offices of the patentee of the subpoena office, the deputy of the patentee of the subpoena office, the clerk of affidavits, the assistant clerk of affidavits, the second assistant clerk of affidavits, the clerk of reports, the doorkeeper of the Court of Chancery, and the crier of the Court of Chancery, and the office of usher of the Court of Chancery now held by Thomas Francis Le Dieu, shall be abolished.

28. From and after the 28th day of October, 1852, the execution of the duties of the subpoena office shall be transferred to the clerks of records and writs, and such duties shall be performed by them in such manner as they are directed to perform the same by the Act of the Session holden in the 8 & 9 Vict. c. 105, after the death, resignation, or removal from his office of the present patentee of the subpoena office.

29. From and after the 28th day of October, 1852, the duties of the Affidavit Office of the Court of Chancery shall be performed by the clerks of records and writs, but affidavits or affirmations may be sworn, affirmed, or attested



upon honour and declarations made before the clerk of enrolments for the time being, as occasion may require, for the better despatch of business; and the duties of the clerk of reports shall be performed by such person or persons as the Lord Chancellor shall appoint for that purpose, and such person or persons shall be entitled under this Act to such salary or salaries as the Commissioners of her Majesty's Treasury shall by any order direct, provided that the whole amount of such salaries shall not in any one year exceed the sum of 400*l*.

30. Every order made in matters in lunacy by the Lord Chancellor, or the person or persons intrusted as aforesaid, when drawn up by the secretary of lunatics, and signed by the Lord Chancellor, or the persons or person intrusted as aforesaid, shall be entered by such secretary, who shall be henceforth called the registrar in lunacy, in a proper book to be provided by him for that purpose; and he shall furnish to every person requiring the same office copies of such orders, or of such part thereof as may be required, which copies shall be signed by such registrar in lunacy, and he shall provide a seal for his office, and shall cause to be sealed or stamped therewith all such office copies as aforesaid; and every such office copy, purporting to be so signed, and sealed or stamped with such seal, shall at all times, and on behalf of all persons, and whether for the purposes of this Act or otherwise, be admitted as evidence of the order of which it purports to be a copy, without any further proof thereof.

31. Where any such order in lunacy relates to the payment, transfer, or carrying over of any cash, stock, funds, annuities, securities, or other effects, to or into the name of the Accountant-General of the Court of Chancery, to the credit of the matter of any person or persons being idiot, lunatic, or of unsound mind, or to the payment, transfer, or carrying over, or other disposal by the said Accountant-General of any cash, stock, funds, annuities, securities, or other effects which may be standing in his name to the credit of the matter of any person or persons being idiot, lunatic, or of unsound mind, the said Accountant-General, and all other persons, including the Governor and Company of the Bank of England, and all other companies and societies, shall act upon such order, signed by the Lord Chancellor, or the person or persons intrusted as aforesaid, after the same shall have been so entered as aforesaid, in the same manner as if such order had been also drawn up by the registrar of the Court of Chancery, and passed and entered according to the mode heretofore in force; and the registrar in lunacy shall certify under his hand to the said Accountant-General what stocks or funds he is by virtue of any such order to transfer, and to whom, in the same manner as the registrars of the Court of Chancery have been heretofore accustomed to do.

32. It shall not be necessary hereafter to file

any certificate or report of the Masters in Lunacy in the report office of the Court of Chancery, but the said Accountant-General, and all other persons including as aforesaid, shall act upon all certificates and reports of the Masters in Lunacy, filed in the office of the registrar in lunacy, in the same manner as if such certificate and reports respectively had been also filed in the report office of the Court of Chancery according to the mode heretofore in force.

33. If any person shall forge the signature of the registrar in lunacy, or shall forge or counterfeit the seal of his office, or knowingly concur in using any such forged or counterfeit signature or seal, or shall tender in evidence any document with a false or counterfeit signature of such registrar, or with a false or counterfeit seal, knowing the same signature or seal to be false or counterfeit, every such person shall be guilty of felony, and shall be liable to the same punishment as any offender under an Act of the Session holden in the 8 & 9 Vict. c. 113.

34. And whereas all notes and cheques for the payment of money drawn by the Accountant-General of the Court of Chancery upon the Bank of England have been heretofore countersigned by the registrars of the said Court, in pursuance of the provisions of the Act of the Session holden in the 12 Geo. 1, c. 32: And whereas all copies and extracts taken from the registrar's books deposited in the office of the Master of the Reports and Entries have been heretofore signed by the said registrars: And whereas the performance of such duties by the said registrars is attended with inconvenience, and interrupts them in the execution of their other duties; and it is expedient that the Master of Reports and Entries should be empowered to sign documents as well as the said registrars: Be it therefore enacted, That the duties relating to the countersigning the notes or cheques drawn by the Accountant-General of the said Court upon the Bank of England, and to the signing the copies and extracts made in or issuing from the office of the Master of Reports and Entries, heretofore performed by the registrars of the said Court, so far as it shall be found necessary or expedient to continue such duties, shall be performed by the Master of Reports and Entries, or the registrars of the said Court, in such manner and under such rules and regulations as the Lord Chancellor shall from time to time by any order direct.

35. The Master of Reports and Entries shall also perform all such other duties as the Lord Chancellor shall from time to time by any order direct.

36. And whereas under an order of the said Court recited in the said last-mentioned Act, and thereby confirmed, an account of all monies, securities, and effects belonging to the suitors of the said Court was directed to be kept at the report office; and whereas, since the passing of such Act, three accounts of such monies, securities, and effects have been respectively kept, that is to say, one at the report office by

the clerks of accounts, another in the office of the Accountant-General of the said Court, and a third at the Bank of England: And whereas it is considered that the account so kept at the report office is no longer necessary, and may be discontinued: Be it therefore enacted, That from and after the 1st day of October, 1852, the account so kept at the report office as aforesaid shall be discontinued, and the offices of clerks of accounts shall be abolished, and so much of the said last-mentioned order as requires, that when any money belonging to the suitors of the said Court should be directed to be paid by order of the said Court the note drawn for such money upon cheque paper, as thereby directed, should be carried to the report office, and an entry made thereof there, and intratur written thereon, shall be repealed: and from and after the 1st day of October, 1852, every note or cheque for the payment of money, and any order of the said Court, signed by the Accountant-General of the said Court and countersigned by the Master of Reports and Entries, or one of the registrars of the said Court, as hereinbefore required, shall be sufficient authority to the Bank of England to pay the money mentioned in such note or cheque to the person named therein, or to such person as he or she, by indorsement, shall order to receive the same.

37. It shall be lawful for the said Lord Chancellor from time to time to make and issue such general orders as he shall think fit, as well in relation to any matter connected with the offices by this Act abolished, and not hereby otherwise provided for, as for carrying the provisions of this Act into execution, and also all such other rules and orders as he shall think fit for altering and regulating the business of the several offices of the said Court.

38. Any order or orders for the time being made under this Act may from time to time be annulled, altered, or varied by the like authority by which any such order or orders shall have been made, and new orders may from time to time be made for any of the purposes of the Act by the authority by which orders are hereby authorised to be made.

39. It shall be lawful for the Lord Chancellor, if he shall see fit, to authorise and direct the first, second, and third clerks in each division of the office of the said Accountant-General, from and after the 28th day of October, 1852, to continue to perform the acts or duties hitherto performed by such clerks, in addition to the duties prescribed by Act of Parliament, as heretofore, in exclusion of any other person, and to direct them to be paid such yearly salaries as the Lord Chancellor, with the consent of the Commissioners of her Majesty's Treasury, shall think just; and it shall be lawful for the Lord Chancellor to fix the fees to be paid for such acts as aforesaid, which shall be accounted for in like manner as the other fees now received in the office of the said Accountant-General.

40. Instead of the salaries directed to be paid by the Act of the Session holden in the

5 & 6 Vict. c. 103, to the clerks of the Taxing Masters of the Court of Chancery, every such clerk shall, from and after the 3rd day of November, 1852, be entitled to a salary of 350*l.* per annum.

41. The deposit now payable on setting down appeals and exceptions for hearing shall continue to be payable, and such deposits shall be paid to and received by the senior registrar of the Court of Chancery for the time being, who shall once in every three months pay all sums so received by him into the Bank of England to the credit of the Accountant-General of the said Court (the amount so received and paid by such registrar to be verified by affidavit), and the several sums when so paid in shall be from time to time placed to an account to be intitled "The Appeal Deposit Account," and the monies which shall from time to time be standing to such account shall be paid and applied as the Court of Chancery shall from time to time in that behalf order or direct.

42. And whereas by the Act of the Session holden in the 8 & 9 Vict. c. 15, a certain duty of excise is imposed upon every licence to be taken out by every person exercising or carrying on the trade or business of an auctioneer in any part of the United Kingdom; and it is thereby enacted, that every person who exercises or carries on the business of an auctioneer, or who acts in such capacity at any sale or roup, and every person who sells or offers for sale any goods or chattels, lands, tenements, or hereditaments, or any interest therein, at any sale or roup where any person or persons become the purchaser of the same by competition, and being the highest bidder, or by any other mode of sale by competition, shall, except as hereinafter mentioned, be deemed to carry on the trade or business of an auctioneer, and shall be required to take out such licence as thereby directed; and that every person who carries on the trade or business of an auctioneer as aforesaid without taking out such licence shall, except as thereafter mentioned, forfeit 100*l.*: And whereas doubts have arisen whether any sale or sales by way of auction can now be made under any order or decrees of the Court of Chancery before any officer of the said Court, or the persons by such officer in that behalf appointed, without rendering such officer or other person liable to take out such licence as by the said last-mentioned act is directed to be taken out by all persons acting as auctioneers; and it is expedient that such doubts should be removed: Be it therefore enacted, That it shall be lawful for any Master in Ordinary of the Court of Chancery, and for the chief clerk of any such Master, and for every other person appointed in that behalf by any such Master, to sell any goods or chattels, lands, tenements, or hereditaments, or any interest therein, under any decree or order of the said Court, by auction or by any other mode of sale by competition, without any licence as an auctioneer, and without being liable to the duty imposed by the said last-mentioned Act, or any other Act or Acts now in force.

43. The Masters in Ordinary of the Court of Chancery and their chief clerks shall be discharged and freed from all suits, prosecutions, liabilities, pains, and penalties to which they or any or either of them are or is or might be liable for or on account of any sale by or by way of auction or competition heretofore made or conducted by or before them or any or either of them.

44. It shall be lawful for the keeper or clerk of her Majesty's hanaper, deputy clerk of the hanaper, the patentee of the subpoena office, and for every officer of the Court of Chancery, and for every officer or person employed in the offices of the Masters in Lunacy, or the registrar in lunacy, whose salary or emoluments shall be taken away or diminished by the operation of this Act, or by the rules and orders to be made thereunder, to make a claim for compensation to the Commissioners of her Majesty's Treasury for the time being, and such Commissioners are hereby required, within the space of six calendar months after any such claim shall have been made, by examination upon oath or otherwise (which oath they and each of them are and is hereby authorised to administer), to inquire whether any and if any what compensation ought to be made to such clerk of the hanaper, deputy clerk of the hanaper, patentee of the subpoena office, and to any officer or person claiming such compensation, the said Commissioners having regard to the conditions on which the appointment of any such officer or person was made, or to any notice which at the time of such appointment may have been given to such officer or person that his office was to be holden subject to any provision by Parliament for the abolition or regulation thereof, but with full power for the said Commissioners to investigate and determine whether from the nature of the office or mode of accession thereto any such conditions or notice could have been properly made or given, and also having regard to the holding of any office, place, or situation in the said Court by such officer or person; and in all cases in which it shall appear to the said Commissioners that compensation ought to be granted, it shall be lawful for the said Commissioners, by warrant under their hands, to order and direct that such annual compensation shall be made to the persons so claiming such compensation as aforesaid, or any of them, as to the said Commissioners in their discretion shall seem just and reasonable; and all such compensations shall be paid and payable out of such funds and in such manner as is hereinafter in that behalf directed: Provided always, that an account of all such compensations shall, within 14 days next after the same shall be so granted, be laid upon the table of the House of Commons, if Parliament shall be then assembled, or if Parliament shall not be then assembled then within 14 days after the meeting of Parliament then next following.

45. Every person now holding any freehold office or office for life or during good behaviour

which is abolished by this Act, and in respect of which any annual or other fixed salary is by virtue of any Act of Parliament or otherwise by law payable, shall be entitled to receive such salary during the residue of the term of his natural life, in the same manner and out of the same fund as if this Act had not been passed; and every person now holding any freehold office or office for life or during good behaviour, which is abolished by this Act, and in respect of which any fees of office are by law or custom payable, shall be entitled to receive from and after the passing of this Act, during his natural life, an annuity equal to the average annual amount of such fees of office during the three years next preceding the passing of this Act; and the amount of such annuity shall be determined by the Lords Commissioners of her Majesty's Treasury, in the same manner, and shall be paid out of such funds and in such manner, as is by this Act directed with respect to the compensations hereby provided to be given to officers whose salary or emoluments shall be taken away or diminished by the operation of this Act, or by the rules and orders to be thereunder made.

46. From and after the passing of this Act it shall be lawful for the Lord Chancellor, by any order made on a petition presented to him for that purpose, to order (if he shall think fit) to be paid to any person now or hereafter holding any office or appointment in the Court of Chancery, *other than and except any clerk of enrolments, clerk of records and writs, or Taxing Master, to whom, subsequently to the passing of this Act, the Lord Chancellor, under the Act passed in the Session of Parliament holden in the 5 & 6 Vict., intitled "An Act for abolishing certain Offices of the High Court of Chancery," shall have ordered a retiring allowance to be paid,* and to any officer or person employed in the offices of the Masters in Lunacy, or the registrar in lunacy, who shall be afflicted with some permanent infirmity disabling him from the due execution of his office, or shall have continued in any office or offices for 20 years and shall be desirous of resigning the same, a superannuation allowance under this Act, and thereupon such officer or person shall be entitled to receive such superannuation allowance as the Commissioners of her Majesty's Treasury shall think proper to direct; and in ascertaining and awarding the amount of such superannuation allowance, the said Commissioners shall take into consideration the whole period during which any such officer or person shall have been permanently employed in any office or situation in the said Courts or offices, and shall proceed according to the principles laid down by an Act passed in the Session holden in the 4 & 5 Will. 4, c. 24, "to alter, amend, and consolidate the Laws for regulating the Pensions, Compensations, and Allowances to be made to Persons in respect of their having

<sup>1</sup> The provision in *italics* was added in the Bill No. 2, reprinted 30th June, and so passed.

held Civil Offices in his Majesty's Service : " Provided always, that the Lord Chancellor shall in every such order state the cause for making the same, and shall cause a copy of such order to be laid on the table of the House of Commons within 14 days next after the making of the same if Parliament shall be then assembled, and if Parliament shall not be then sitting then within 14 days next after the assembling thereof.

47. From and after the passing of this Act, it shall be lawful for the Lord Chancellor, by order, to remove any officer of the Court of Chancery, or any officer or person employed in the offices of the Masters in Lunacy, or the registrar in lunacy, who shall be afflicted with any infirmity which shall disable him from the due execution of his office, and who shall refuse to resign, or become incapable of resigning the same, and upon such removal to order to be paid to any such officer or person so removed an annuity or retiring allowance, not exceeding two-third parts of the yearly sum or salary to which he shall be entitled at the time of his removal, such annuity or retiring allowance to be paid out of the funds, and in the manner in which retiring allowances under this Act are hereinafter directed to be paid.

48. Except as herein otherwise provided, all salaries under this Act shall grow due from day to day, but shall be payable under an order of the Lord Chancellor on the 3rd day of February, the 3rd day of May, the 3rd day of August, and the 3rd day of November in every year, or on such other days as the Lord Chancellor shall from time to time by any order direct, and shall be paid to the parties entitled thereto, or their respective executors or administrators, out of the fund standing in the name of the Accountant-General of the Court of Chancery, to the account intitled "The Suits Fee Fund Account," but subject and without prejudice to the payment of all salaries and other sums of money by any former Act or Acts now in force directed or authorised to be paid thereout.

49. The compensation to be made under this Act to the persons holding the offices of the keeper or clerk of her Majesty's hanaper, deputy clerk of the hanaper, chaff wax, deputy chaff wax, sealer, and deputy sealer, shall be issued and payable out of and charged and chargeable upon the Consolidated Fund of the United Kingdom, after paying or reserving sufficient to pay all such sums of money as by any Acts of Parliament now in force have been directed to be paid thereout, but with precedence to all other payments which shall hereafter be charged thereupon, and such compensations shall be paid quarterly, free and clear from all taxes and deductions whatsoever, on the four usual quarterly days of payment in the year; that is to say, the 5th day of January, the 5th day of April, the 5th day of July, and the 10th day of October in every year by equal portions, the first payment to be computed from the 28th day of October, 1852, to be made on each of the same days of payment as shall

happen next after the Commissioners of her Majesty's Treasury shall have issued their warrant for any such compensation, and a proportionate part thereof to be paid for the quarter current at the death of any of the persons in the receipt of such compensation.

50. Except as herein otherwise provided, all compensations and superannuation or retiring allowances under this Act shall grow due from day to day, but shall be payable on the 3rd day of February, the 3rd day of May, the 3rd day of August, and the 8th day of November in every year, or on such other days as the Lord Chancellor shall from time to time by any order direct, and shall be paid to the parties entitled thereto, or their respective executors or administrators, out of the interest and dividends of the Government or Parliamentary securities now or hereafter to be placed in the name of the Accountant-General of the Court of Chancery to the two accounts, intitled "Account of Monies placed out for the Benefit and better Security of the Suits of the High Court of Chancery," and "Account of Securities purchased with surplus Interest arising from Securities carried to an Account of Monies placed out for the Benefit and better Security of the Suits of the High Court of Chancery," or either of them, by the Governor and Company of the Bank of England, by virtue of any order or orders of the Lord Chancellor, to be made from time to time for that purpose, without any draft from the Accountant-General, but subject and without prejudice to the payment of all salaries and other sums of money by any former Act or Acts now in force directed or authorised to be paid thereout.

51. All salaries payable under any Act or Acts now in force out of the fund standing in the name of the Accountant-General of the Court of Chancery to the account intitled "The Suits Fee Fund Account," by equal quarterly payments on the 25th day of February, the 25th day of May, the 25th day of August, and the 25th day of November in every year, shall from and after the passing of this Act be respectively payable and paid by equal payments on the 3rd day of February, the 3rd day of May, the 3rd day of August, and the 3rd day of November in every year, and a proportionate part of the first of such last-mentioned quarterly payments, to be computed from the last day of payment of such salaries, shall be made on the first of such quarterly days of payment hereby appointed which shall happen next after the passing of this Act, and upon the resignation, death, or removal from office of any person entitled to receive any such salary, such person, or his executors or administrators, as the case may be, shall be paid such proportionate part of the salary aforesaid as shall have accrued since the last quarterly payment thereof to the time of such resignation, death, or removal from office.

52. It shall be lawful for the Lord Chancellor by any order or orders to be from time to time made for that purpose, to order payment,

at such times, and in such manner, and out of such of the funds hereby charged as he shall think fit, of all such sums as shall appear to him to be reasonable and proper to be paid for providing suitable courts, rooms, and buildings in which the business of the Court of Chancery may from time to time be carried on, and for keeping order in the several Courts, and for the care and cleaning of all such Courts, rooms, and buildings, and for the rent, taxes, rates, insurance from fire, and other outgoings charged upon or payable for or in respect thereof, and for the enlargement, alteration, or improvement, repairs, furnishing, and fitting up of the same, and for the books and stationery which may be required for the business of the said Court and the offices thereof, and for the making, writing, printing, counting, and examining official documents and records of the said Court, and office and other copies of such documents and records, and for coals and candles, and other necessary articles for the said Courts and offices, and for all other necessary expenses relating thereto, and for the expenses of the pursebearer and the running porter to the Great Seal, and the messenger to the Lord Chancellor during his absence from town, and for the petty expenses now borne by the porter's fund; and it shall be lawful for the Master of the Rolls to appoint a clerk or clerks to be employed in the office of the Secretary at the Rolls, which clerk or clerks shall receive by way of salary such annual sum or sums as the Master of the Rolls shall from time to time fix and determine; provided always, that such annual sum or sums shall not in the whole in any one year exceed the sum of 300*l*.

53. And whereas many of the fees payable to the Sutors' Fee Fund have been lately abolished, and several of them have been reduced, and under the provisions of this Act there will be a further reduction of the fees payable to the said fund: And whereas, in order to effect such reduction, and at the same time to keep up the said fund to an amount sufficient to satisfy the charges thereon, as well under this Act as under any former Act, it is expedient to make such addition to the said fund as hereinafter provided: Be it therefore enacted, That so much of any Act or Acts now in force as directs that the surplus interest and annual produce which hath arisen and shall arise from the monies placed out on the several accounts, intituled "Account of Monies placed out for the Benefit and better Security of the Sutors of the High Court of Chancery," and "Account of Securities purchased with surplus Interest arising from Securities carried to an Account of Monies placed out for the Benefit and better Security of the Sutors of the High Court of Chancery," beyond what shall be sufficient to answer the purposes of the several Acts relating to such securities, and also the interest produced from the securities purchased with such surplus interest and annual produce, shall from time to time be placed out in the purchase of Government or Parliamentary Securities in

the name of the Accountant-General of the said Court, and placed to the credit of the said account, intituled "Account of Securities purchased with surplus interest arising from Securities carried to an Account of Monies placed out for the Benefit and better Security of the Sutors of the High Court of Chancery," shall be repealed, and the surplus interest and annual produce hereafter to arise from the monies placed out on the two several last-mentioned accounts, beyond what shall be sufficient to answer the purposes of this Act, and the several other Acts relating to such securities, shall be carried over by the said Accountant-General and be placed to the said account, intituled "The Sutors' Fee Fund Account," and shall thereupon become part of the fund standing to such account.

54. If at the end of any year there shall be a surplus standing to the credit of the said account, intituled "The Sutors' Fee Fund Account," after payment of the several salaries and sums of money charged thereon by this Act or any former Act, it shall be lawful for the Lord Chancellor by any order to direct that such surplus, or such part thereof as to the Lord Chancellor shall seem fit, shall be invested in the purchase of Parliamentary or Government Securities in the name of the said Accountant-General, to be placed to the account, intituled "Account of Monies placed out to provide for the Officers of the High Court of Chancery," and it shall be lawful for the Lord Chancellor in like manner to direct the investment of the dividends or interest to accrue from time to time on the securities now or at any time hereafter under this Act or any former Act to be placed to the said last-mentioned account, or so much of such dividends and interest as he shall think fit, in the purchase of Parliamentary or Government Securities in the name of the said Accountant-General, to be by him placed to the credit of the said last-mentioned account, and as often as there shall be a deficiency in the said account, intituled "The Sutors' Fee Fund Account," at any of the times appointed for payment of any of the salaries or sums of money charged thereon, it shall be lawful for the Lord Chancellor to direct the said Accountant-General to make good such deficiency by carrying over and placing to the said account, intituled "The Sutors' Fee Fund Account," such sum as the Lord Chancellor may consider sufficient for that purpose, out of the interest and dividends to arise from the Government or Parliamentary Securities standing to the said account, intituled "Account of Monies placed out to provide for the Officers of the High Court of Chancery," or by a sale of so much of the said securities as may be necessary for that purpose.

55. In the construction of this Act, unless such meaning be repugnant to or inconsistent with the context, the expression "Lord Chancellor" shall mean and include the Lord High Chancellor of Great Britain, and the Lord Keeper or Lords Commissioners, of the Great Seal of the United Kingdom for the time being.

## DETERMINATION OF TERM ATTENDANT ON THE INHERITANCE.

THERE have been very few decisions under the Statute 8 & 9 Vict. c. 112, for merging satisfied Terms; and it should be recollected that the title to terms of years attendant upon the inheritance must still be traced so as to show in whom they were vested at the time when they became subject to the operation of the Act. The following case (just reported) may properly be called to the attention of our readers. It was an action of ejectment, tried before Mr. Justice Erle, and the following points were established:—

"In 1838, Mary Humphreys, with others, mortgaged the premises in question for 1,000 years to Davies to secure the repayment of 60*l.* and interest.

"In 1839, she conveyed the fee for 19*l.*, subject to this mortgage term, to her daughter Caroline, the wife of the defendant, as trustee for sale; and this conveyance was unknown to the parties to the subsequent deeds.

"In 1842, she mortgaged the premises in fee to Minshull. In October, 1844, she conveyed the equity of redemption after these mortgages to Clay, the lessor of the plaintiff, with power to Meredith Humphreys (son of Mary), to become jointly entitled. In December, 1844, Minshull assigned the mortgage of the fee to Richard Thompson in trust for sale; and the representatives of Davies, who had died, assigned the term of 1,000 years to John Thompson, as trustee, there being a further advance on mortgage by Richard Thompson to Clay; and the term was declared to be to secure the mortgage to and afterwards to be reconveyed as Clay and Meredith Humphreys should direct.

"In September, 1847, a part of the premises being required for a railway, Clay received the purchase-money from the company, and therewith paid off the mortgagees.

"The plaintiff's case was first rested on the demise of Richard Thompson as owner of the fee. On the defendants proving the prior conveyance of the fee in 1839, the plaintiff relied on the demise by John Thompson, the assignee of the mortgage term for 1,000 years. And the defendant, in answer, contended that it is a satisfied term determined by the operation of Stat. 8 & 9 Vict. c. 112, s. 2, enacting that a term of years, which by express declaration or by construction of law, becomes attendant upon the inheritance, immediately upon the same becoming so attendant, absolutely ceases and determines."

A verdict was found for the plaintiff, but leave given to move to enter it for the defendants. The case having been argued before the Court of Queen's Bench, Mr.

Justice Patteson delivered the following judgment:—

"It is not necessary to decide whether the defendant, claiming to have the fee, can maintain that this is a satisfied term, the satisfaction of the mortgages having been made, not by him but by Clay, under a mistaken belief that the equity of redemption in fee had been conveyed to himself; because we are of opinion that this term is not within either of the alternatives in the statute for determining terms. It is *not attendant on the inheritance by express declaration*, there being no such declaration. *Neither is it by construction of law*; for the trust is expressly declared to be for Clay and Humphreys, who have not the inheritance. And, although they were supposed to be entitled thereto when the deed was executed, that supposition is now proved to have been founded on a mistake. That mistaken supposition has no effect upon the express words of the instrument." *Doe dem. Clay v. Jones*, 13 Q. B. 774.

## DISSOLUTIONS OF PROFESSIONAL PARTNERSHIPS.

*From June 22nd, to July 23rd, 1852, both inclusive, with dates when gazetted.*

Bloxsome, Edward, jun., and Thomas Atkins, Dursley, Attorneys and Solicitors. June 22.

Gregory, William, and John Holliwell Gregory, Liverpool, Attorneys and Solicitors. July 16.

Vernon, George Croft, and Luke Minshall, Bromsgrove, Attorneys and Solicitors. July 2.

## PERPETUAL COMMISSIONERS.

*Appointed under the Fines' and Recoveries' Act.*

Bailey, Edward Savage, 5, Berners Street, Oxford Street.

Rawlings, Benjamin William, Romford, in and for the County of Essex.

Warren, Augustus, 57, Great Russell Street, Bloomsbury.

Williams, William, 32, Lincoln's Inn Fields.

## MASTERS EXTRAORDINARY IN CHANCERY.

*From June 22nd, to July 23rd, 1852, both inclusive, with dates when gazetted.*

Crosby Timothy, Stockton. July 2.

Marshall, John Stewart, Wigan. July 23.

Shaw, Abel Hyde, Stalybridge. June 22.

## LAWYERS IN PARLIAMENT.

## FURTHER RETURNS.

To the List already published, we have to add the following Members of the Profession, who have been returned to the New Parliament:—

Carter, Samuel, *Tunstock*.  
 Hadfield, George, *Sheffield*.  
 M'Mahon, Patrick, *Wexford*.  
 Shee, William, S. L., *Kilkenny (County)*.  
 Scally, Francis, *Tipperary*.

## UNSUCCESSFUL CANDIDATES.

The following Legal Candidates have not been returned:—

Craig, Sir William Gibson, Bart., *Edinburgh*.  
 Dundas, Right Hon. Sir David, *Sutherland-shire*.  
 Ellis, John, *Lancaster*.  
 Grattan, Henry, *Meath (County)*.  
 Grey, Rt. Hon. Sir Geo., Bart., *Northumberland (N)*.  
 Hatchell, Right Hon. John, *Windsor*.

## RECENT DECISIONS IN THE SUPERIOR COURTS. AND SHORT NOTES OF CASES.

## House of Lords.

*Bright v. Hutton.* June 21, 22, 26, 1852.

### ABORTIVE RAILWAY COMPANY.—WINDING-UP ACTS.—CONSTRUCTION.

Held, that an abortive railway company which had been provisionally registered, may be dissolved and wound up in accordance with the provisions of the 11 & 12 Vict. c. 45, and 12 & 13 Vict. c. 108, under the direction of the Court of Chancery, if that Court consider it is fit and proper that it should be so dealt with.

THE Direct Birmingham, Oxford, Reading, and Brighton Railway Company was projected in 1845, and provisionally registered by the promoters, and a prospectus was published, containing a list of the provisional committee, which consisted of more than seven persons appointed with their own consent, and included the name of the appellant; in which prospectus it was proposed to establish a railway company with a capital of 2,000,000*l.*, in 80,000 shares of 25*l.* each, with a deposit of 2*l.* 12*s.* 6*d.* upon each share on allotment. It appeared that a meeting of more than seven of the persons whose names had been inserted in the prospectus as provisional committee was held, at which a provisional committee and also a managing committee were appointed, each consisting of more than seven persons nominated with their own consent. At that meeting it was resolved to establish the company as proposed by the prospectus for constructing the railway therein mentioned, and to apply for an Act of Parliament to establish such company, and to procure the necessary plans, &c., for that purpose. 5,000 shares were allotted to different persons, in various numbers, but 500 only were accepted by the allottees. It was ultimately found to be impracticable to procure subscribers for a sufficient number of shares to enable the parties to carry the project into effect, and the Vice-Chancellor of England had therefore, by an order made on December 21, 1849, under the Winding-up Acts, ordered that the company should be dissolved, whereupon this appeal was presented. Counsel were directed first to direct their arguments as to whether the company was within the acts.

*C. Parton Cooper and Morris* for the appellant; *Bethell and Roxburgh* for the official manager, the respondent.

The question was put to the Judges,<sup>1</sup> whether the Winding-up Acts were applicable to the present case.

*Parke, B.*, delivered judgment as follows:—In answer to your Lordships' question, I have to state, that we are of opinion that the persons who acted together, for the purpose of obtaining an act of Parliament to make a railway in the manner therein stated, were a company or association within the meaning of the Joint-Stock Companies' Winding-up Acts, 1848, 1849, and that the association of those persons may be dissolved and wound up under the direction of the Court of Chancery, if that Court consider that it is fit and proper that it should be so dealt with.

The first of these two Acts, 11 & 12 Vict. c. 45, reciting the previous Act of 7 & 8 Vict. c. 111, and the Irish Act, 8 & 9 Vict. c. 98, and the 9 & 10 Vict. c. 28, and the propriety of amending them, and giving further facilities for the Dissolution and Winding-up of Joint-Stock Companies and Partnerships, enacts, that the Act shall apply to all companies corporate or incorporate, within the provisions of the two first-mentioned Acts, to other companies not material to the present inquiry, and lastly, to all companies, associations, and partnerships to be formed after the passing of that Act, whereof the capital or the profits is or are divided, or to be divided into shares, and such shares transferable without the express consent of all the co-partners, and by sect. 2, to all associations and companies formed for the purpose of working mines, and benefit societies not certified or enrolled.

By the interpretation clause, the word "company" in the Act is to mean any partnership, association, or company, corporate or incorporate, to which the Act applies.

The body of persons, or association in question, is not within the latter part of the first section above referred to, for it has no stock divisible into shares; whether it is within the

<sup>1</sup> Present: *Parke and Alderson, BB., Maule, Wightman, and Erie, JJ., Platt, B., Williams and Talfourd, JJ., Martin, B., and Crompton, J.*

former, 7 & 8 Vict. c. 111, is a more doubtful question. It clearly does not fall within the other Act referred to, for it is an Act confined to Ireland. The 7 & 8 Vict. c. 111, comprises in it various companies. It embraces commercial or trading companies incorporated; this is not one. But it also applies to any company or body of persons associated together for commercial or trading purposes, to which privileges have been granted under 7 Will. 4, and 1 Vict. c. 73, or which is registered provisionally or completely under 7 & 8 Vict. c. 110. Now, this is not a company or body of persons associated together directly for commercial or trading purposes (if the making of a railway be such a purpose, which may be questioned); the immediate object of this association is not the working of a railway, but the obtaining an act to enable them to do so, after subscriptions have been obtained, and a company has been formed; but as the Act speaks of such a body being provisionally registered as a condition, and a complete company practically never is, the probable meaning of the section is, that a body of persons associated to obtain an Act of Parliament to enable them to act as a company for commercial or trading purposes, whose ultimate, though not immediate, purpose is commercial or trading, is within this Act, and if so, it would be within the 11 & 12 Vict. c. 45, as that Act is expressly made applicable to every company within the provisions of the former Act, 7 & 8 Vict. c. 111.

If the question depended upon this company or association being within the 7 & 8 Vict. c. 111, we should have to decide whether the construction of a railway were a "commercial or trading purpose;" but it is not necessary to do so. It is, however, material, as it seems to show that an association of promoters may be dealt with by the Court of Chancery for the purpose of being wound up, if their object is to form a company for commercial or trading purposes.

The Statute 9 & 10 Vict. c. 28, shows this more clearly. It provides, that persons or companies who before that Act have entered into a subscription contract, or any other agreement or agreements in writing or otherwise, for the formation of a company or partnership for making any railway which cannot be carried into effect without obtaining the authority of Parliament, and in respect of which no act had been obtained to dissolve the company or partnership contract or agreement, whether or not such contract or agreement shall contain any provisions for the dissolution of the company or partnership intended to be thereby formed. This statute provides, that it shall be lawful for the committee, provisional directors, or other persons by such contract or agreement intrusted with the management or carrying on of the undertaking to call a meeting to ascertain if the company shall be dissolved, and whether such dissolution shall be deemed an act of bankruptcy, in which case the affairs of the company shall be wound up under the provisions of the 7 & 8 Vict. c. 111, otherwise on an ordinary partnership.

No such proceeding appears to have been taken in the case supposed in your lordships' questions, and therefore that particular statute is not applicable to it.

But the statute shows that an undertaking by projectors to form a future company is capable of being dealt with under 7 & 8 Vict. c. 111, as a company, and may have its affairs wound up and settled by the Court of Chancery, under sect. 23 of that Act, if that Court shall think fit. It does not follow that every case of projectors of an intended company ought to be or would be so dealt with.

This statute was followed by the 11 & 12 Vict. c. 45, which extended the operation of the prior Winding-up Acts, and gave the Court of Chancery the power, on the application of a contributory by petition to the Lord Chancellor or Master of the Rolls, to order the dissolution or winding up of the company or association therein referred to, not merely in case of bankruptcy, but in case of insolvency, or a judgment or decree against the company unpaid, or on a proceeding by a creditor of the company, or if any other matter or thing should be shown which, in the opinion of the Court shall render it just and equitable that the company should be dissolved.

This statute, as has been before stated, does not in terms embrace this company, unless it be a company or body of persons formed for commercial or trading purposes under 7 & 8 Vict. c. 111, and it contains many provisions which are inapplicable, except to regularly formed companies.

In the cases of provisional committees, or the projectors of a company, it is now perfectly well settled law, and acted upon in every Court of Law in Westminster Hall, that there is no partnership between them,—no common power of binding each other merely by such a relation, each binds himself by his own acts only. There are therefore very few creditors of such a body collectively, though many of one, two, three, or more of the acting individuals who compose the committee, or are projectors, and so there may be a series of contracts to which there are different contributories according as they have been authorised by different persons,—very few binding all, and those only upon whom the rare accident of each individual authorising that particular contract.

These inchoate undertakings have generally no joint estate, effects, or credits of which there can be a manager (11 & 12 Vict. c. 45, ss. 19, 20.), the body cannot have a judgment or decree against the whole body, except in the rare case that all the projectors have jointly contracted, so that no proceedings could be taken under that statute, s. 5, nor are there any contributories of the entire company, except in the extraordinary case of all having contracted, for contributories are those only who have contracted by themselves or agents with a creditor, or who have agreed to indemnify or pay, in part or in all, those who have contracted with the creditor on their own account. We con-



sider the law to have been most correctly laid down by Lord Cranworth in Carrick's Case, 1 Sim. N. S. 509. All the questions of contributories resolve themselves into two simple questions of fact:—1st,—by far the most frequent occurrence,—did the alleged contributory make or authorise to be made, the contract in respect of which he is called on to contribute, on his account jointly with others; or, 2ndly, if any one or more entered into the contract in his own or their own behalf, did he agree to indemnify the person or persons contracting in part or in all against the consequences of that contract.

The machinery of this Act (11 & 12 Vict. c. 45) is undoubtedly not well adapted to such a case.

This statute was followed up by 12 & 13 Vict. c. 108, passed to amend the former. It is enacted, that notwithstanding anything in that Act importing a more limited application thereof, the same shall apply to all partnerships, associations, and companies, whereof the partners or associates are not less than seven in number, whether incorporated or unincorporated.

This statute renders all liable, whether their purpose were commercial or not.

We think that the term "association" is applicable to such a body of persons as is described in your Lordship's question.

That body would, we think, have been within the 11 & 12 Vict., if its objects had been commercial, the only question in that Act being, whether a railroad fell within that description. The object of the 12 & 13 Vict. was to extend the former Acts, upon which a more limited construction was put. This body would clearly have fallen within the 9 & 10 Vict. c. 28.

We are of opinion, therefore, that it was meant to be comprised in the class of "associations." It is perfectly true that some of the provisions in this statute, as well as the bulk of those under the former, are applicable only to partnerships, and companies which have a joint-stock capital and credits, who are united together with a common purpose of making joint contracts, who for that purpose are bound by the agency of one another, or by that of one or more common agents, be they directors or officers, and who would necessarily have contributories bound by such joint contract.

But though these provisions are inapplicable generally to the cases of projectors of different companies, there may be cases in which they, or some of them, are capable of being applied with advantage, entirely or partially; and we think it is for the Court of Chancery to decide, which it has undoubtedly a discretion to do (sect. 12, 11 & 12 Vict. c. 45) on each application, whether the particular concern is one to which it will, under all the circumstances, be proper that the Act should be applied. We think that this consideration affords an answer to an objection which appeared, at first sight, to present a formidable difficulty: That there are associations comprehended in those which we consider to be within the Winding-up Acts, in

which there would be a great difficulty and inconvenience in applying the Acts. At the same time it may be observed that there are others in which they may with convenience be applied.

We answer your Lordship's question by stating, that the proposed case is one to which the Winding-up Acts may be applied, if the Court think fit, not one to which the Court must apply them.

The Lord Chancellor, after stating that he entirely concurred in the opinion of the Judges and the reasons for the result arrived at, that companies like the present were within the operation of the Winding-up Acts, then moved the case should be heard on the merits.

Lord Brougham concurred, and ordered accordingly.

### Lord Chancellor.

July 21.—*McCalmont v. Rankin*—Appeal from Vice-Chancellor Wigram dismissed with costs.

— 21.—*Strong v. Strong*—Compromise come to.

— 22.—*Pollard v. Doyle*—Appeal dismissed from Vice-Chancellor Lord Cranworth.

— 22.—*Mayor, &c., of Rochester v. Lee*—Decision of Vice-Chancellor Knight Bruce varied as to costs.

— 22, 23.—*Adey v. Arnold*—Appeal from Vice-Chancellor Lord Cranworth dismissed with costs.

— 22, 24.—*Nawulshaw v. Brownrigg and others*—Appeal from Vice-Chancellor Lord Cranworth dismissed with costs.

— 23, 24.—*Abbott v. Sworder*—Appeal dismissed from Vice-Chancellor Knight Bruce.

— 26.—*Dodson v. Powell; Powell v. Dodson*—On re-hearing, decree affirmed.

— 24, 27.—*Dyke v. Rendall*—Appeal allowed from Vice-Chancellor Knight Bruce.

— 26, 27.—*Hawkes v. Eastern Counties Railway Company*—Application refused to advance this appeal for re-hearing, and order to stand over to Michaelmas Term.

— 27.—*Garden v. Ingram*—Appeal from Vice-Chancellor Knight Bruce dismissed with costs.

— 27.—*Wilcocks v. Revis*—Appeal dismissed with costs from Vice-Chancellor Knight Bruce.

— 27.—*Rodick v. Gandell*—Appeal from the Master of the Rolls dismissed with costs.

— 27.—*Exparte Sutton, in re Bank of Australia*—Appeal from Vice-Chancellor Knight Bruce dismissed with costs.

— 27.—*Ward v. Martin*—Appeal dismissed from Vice-Chancellor Knight Bruce.

— 27.—*In re Australia Mail Packet Company, ex parte Mandley*—Appeal from Vice-Chancellor Lord Cranworth dismissed.

— 27.—*Perceival v. Casey*—Appeal dismissed with costs from Vice-Chancellor Knight Bruce.

### Lords Justices.

July 21, 22.—*Ex parte Curties, in re Curties*—Petition dismissed with costs, and certificate and protection refused.

— 24.—*Ex parte Staner, in re Staner*—Petition of appeal from Mr. Commissioner Holroyd dismissed refusing certificate and protection.

— 24.—*Kensit v. Stratford; Same v. Heycock*—Appeal allowed from the Master of the Rolls.

— 23, 26.—*Lee v. Barker*—Appeal dismissed from Vice-Chancellor Parker.

— 26, 27.—*In re Direct Exeter, Plymouth, and Devonport Railway Company, ex parte Woolmer and others*—Appeal dismissed with costs.

— 27.—*Rickford v. Young*—On appeal, decree of Master of the Rolls varied.

— 27.—*Ford v. Stuart*—Part heard.

### Master of the Rolls.

July 21.—*Attorney-General v. Donnington Hospital*—Order in this information to be drawn up without delay.

— 21, 22, 23.—*In re London Dock Company, ex parte Hyde and others*—Cur. ad. vult.

— 26.—*Stoker v. Dean*—Claim for specific performance of agreement dismissed with costs.

— 26.—*Southern v. Wollaston*—Bequest held void for remoteness.

— 26, 27.—*Stiles v. Guy*—Part heard.

### Vice-Chancellor Turner.

July 21, 22.—*O'Brien v. Osborne*—Cur. ad. vult.

— 22.—*Cole v. Muddle*—Decree for delivery up of title-deeds to plaintiffs.

— 23.—*Wilson v. Wilson*—Stand over.

— 24.—*Midland Railway Company v. Brown*—Issue directed at law.

— 24.—*Morgan v. Milman*—Cur. ad. vult.

— 26.—*Sterriker v. Matthews*—Order for perpetual injunction and as to costs.

— 27.—*Reeve v. Hodson*—Issue directed at law.

### Vice-Chancellor Kindersley.

*Vaughan v. Vaughan.* July 19, 1852.

AFFIDAVIT.—SWORN BEFORE MAGISTRATE IN SCOTLAND.—VERIFICATION.

An affidavit sworn at Dumfries in Scotland, before a magistrate, was ordered to be admitted upon the signature being duly verified—it appearing that there was no Master extra. nearer than at Carlisle.

In this suit an affidavit verifying a burial certificate had been sworn at Dumfries, in Scotland, before a magistrate, there being no Master extra. nearer than at Carlisle.

Babington submitted the affidavit was sufficient.

The Vice-Chancellor said, the affidavit would be admitted upon the magistrate's signature being properly verified.

July 21.—*D'Almaine v. Moseley*—Order on petition for payment of money out of Court.

— 22.—*Harvey v. Stracey*—Judgment herein as to construction of will.

— 23, 24.—*Coventry v. Lygon*—Cur. ad. vult.

— 26.—*Potts v. Levy*—Stand over.

— 21, 22, 27.—*Attorney-General v. Governors of Crediton Collegiate Church*—Part heard.

### Vice-Chancellor Parker.

*In re Direct Exeter, Plymouth, and Devonport Railway Company, ex parte Hall.* July 16, 1852.

WINDING-UP ACTS.—MASTER'S JURISDICTION AS TO COSTS.—APPEAL.

Held, dismissing with costs a motion, that the Master has original jurisdiction under the 11 & 12 Vict. c. 45, s. 103, and 12 & 13 Vict. c. 108, s. 12, as to the costs of a contributory, whose name had, on appeal, been removed from the list, but the matter referred back to afford the official manager an opportunity of adducing further evidence, with costs reserved, and on his refusal an application to be made to the Court.

Karslake appeared in support of this motion, for the costs of Dr. William Hall, whose name had been removed from the list of contributories to the above company. It appeared that on the appeal the matter had been referred back to the Master to review his report, to give the official manager an opportunity of adducing further evidence, the costs being reserved, but that he had determined not to proceed further before the Master.

Roxburgh, for the official manager, contra, referred to the 11 & 12 Vict. c. 45, s. 103,<sup>1</sup> and the 12 & 13 Vict. c. 108, s. 12.<sup>2</sup>

The Vice-Chancellor, said, that the application should have been made in the first in-

<sup>1</sup> Which enacts, that "the general costs of winding up the estate, and the costs of proving debts, and of trying issues, and of all other matters in which creditors, or any particular contributories or classes of contributories or alleged contributories of such company shall be interested, shall be at the discretion of the Master, and shall be paid either out of the general estate of such company, or out of any portion of the general estate, or shall be debited or credited to any individual contributories or classes of contributories, or shall be subject to such set-off as the Master shall from time to time direct."

<sup>2</sup> Which provides, that "the costs of all proceedings which shall take place in and about the winding up, as to which the Court shall have made no order, shall be in the discretion of the Master; and that it shall be lawful for the Master to award a single sum or fee for any costs awarded by him, or otherwise to settle the principle and the scale of fees upon or according to which such costs shall be ascertained and settled."

stance to the Master, and upon his refusal to the Court, and dismissed the motion with costs.

July 22. — *Alcock v. Alcock* — Depositions rejected of married woman suing her husband by her next friend.

— 21. — *Great Northern Railway Company v. East and West India Docks and Birmingham Junction Railway Company* — Injunction granted.

— 23. — *White v. Barker* — Judgment on exceptions to answer.

— 26. — *Lovegrove v. Cooper* — Order for payment of money out of Court.

### Court of Queen's Bench.

*Doe dem. Hudson v. Roe.* June 12, 1852.

EJECTMENT. — WRIT OF POSSESSION RETURNABLE IMMEDIATELY. — NOT EXECUTED FOR THREE YEARS.

*Judgment in ejectment was signed in February, 1849, and writ of possession issued returnable immediately, but not executed till April, 1852: Held, valid, and motion to set aside the judgment and writ of possession, discharged with costs.*

*Petersdorff* had obtained, on May 24 last, a rule nisi on the lessor of the plaintiff to show cause why the judgment herein should not be set aside or vacated? and why the writ of possession and execution thereon should not be set aside, and possession of the land taken by the Sheriff of Surrey should not be restored to the tenants? and why the lessor of the plaintiff should not pay the costs of the application? The affidavits in support of such rule stated the judgment to have been signed on the 21st February, 1849, and that a writ of possession, returnable immediately after execution, was issued on the same day, but that such writ was not executed until the 1st April last. The affidavits also contained statements in support of the title of James Randall, the alleged proprietor of the land in question, with denial of any right thereto by lessor of plaintiff, and that the ejectment was brought to recover another piece of land and cottage which Randall held of the lessor of the plaintiff, but not for the land in question which adjoins the said cottage.

*Bramwell* and *Brewer* showed cause against the rule, and contended that the writ of possession was regular in being returnable immediately and not on a day certain in Term or a general return day, and cited the Statute 3 & 4 Will. 4, c. 67, s. 2, which enacts that all writs of execution may be tested on the day when they are issued and be made returnable after execution thereof; and as to title they relied on the affidavits produced against the rule.

*Petersdorff*, in support, contended that the Statute 3 & 4 Will. 4, c. 67, s. 2, applied only to the personal actions named in 2 Will. 4, c. 39, and not to an action of ejectment, and for that reason the return was bad; and argued

that if writs of possession were allowed to be made returnable immediately after the execution, the party issuing such writs might retain them for an indefinite period, as was the case here, and that would lead to mischievous results as against purchasers, as in this case Randall had sold the land in question, and if the writ was held to be regular the purchaser would lose the benefit of his purchase, although the judgment had not been registered; and as to title he submitted the Court would not try title to land on affidavits.

The Court, however, held that under the words of the Statute 3 & 4 Will. 4, c. 67, s. 2, the writ of possession might be returnable immediately after execution, and as it would be better to have uniformity in practice, without going into the question of title, they discharged the rule with costs.<sup>1</sup>

### Common Pleas.

*Haydon v. Templeman.* June 22, 1852.

COUNTY COURTS' EXTENSION ACT. — APPEAL WHERE QUESTION OF LAW AND FACT. — NEGLIGENT DRIVING.

*Held, that no appeal lies under the 13 & 14 Vict. c. 61, s. 14, from the decision of a County Court Judge, where the question involved is one of law and of fact.*

*Held, also, dismissing with costs the appeal, that the defendant was liable for the damage done to the plaintiff's gig by his horse and cart coming in collision therewith, although it was caused by the breaking of the shafts of the defendant's cart from his horse suddenly kicking—the Judge being of opinion, that the presumption of negligence raised by the shafts so breaking was not satisfactorily rebutted.*

THIS was a plaint to recover for damages done to the plaintiff's horse and gig, by reason of the defendant's negligent driving of his horse and cart. It appeared that the defendant was driving down a hill at a rapid rate, and that his horse suddenly began to kick and broke the shafts of the cart, and came into collision with the plaintiff's gig and damaged it. The Judge of the Crewkerne County Court having held, that the breaking of the shafts showed a defect in the cart, which raised a presumption of evidence not satisfactorily rebutted, and given judgment for the plaintiff, this appeal was presented under the 13 & 14 Vict. c. 61, s. 14.

*Phipson*, in support; *Kingdon*, contra, was not called on.

The Court, after observing that there was no appeal on a question of law mixed with fact, held that the defendant was liable, for his not having exercised due care in driving his cart, and dismissed the appeal accordingly.

<sup>1</sup> By the Common Law Procedure Act, 15 & 16 Vict. c. 76, s. 124, writs of execution will remain in force for one year only, but may be renewed.

# The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

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SATURDAY, AUGUST 7, 1852.
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## SUITORS IN CHANCERY RELIEF ACT.

Our last publication contained, without abridgment, the third and completing Act of the series, under which the system of Practice and Procedure in the Court of Chancery is about to be altered and remodelled.

The arrangements it is proposed to effect under the 15 & 16 Vict. c. 87, involve principles of far greater importance than the details by which those principles are sought to be carried out. The officers of the Court of Chancery will, henceforth, have no personal interest in the receipt of fees, as it is expressly provided, that "after the 28th day of October, 1852, no officer of the Court of Chancery, or any of the Judges thereof, shall be entitled to receive and retain for his own use, any fee or reward whatsoever." The same principle is applied to officers who do not properly belong so much to the Court of Chancery as to the Lord Chancellor. For example, the Chancellor's secretary, gentleman of the chamber, pursebearer, and trainbearer, as well as the secretary of presentations and the secretary of commissions of the peace, are in future to be paid by salary in lieu of fees.

Heretofore, whilst the salaries of the Master of the Rolls and of the Vice-Chancellor appointed under the Act 53 Geo. 3, c. 24, were payable out of the Consolidated Fund, the salaries of the Lord Chancellor, Lords Justices, and two of the Vice-Chancellors, were payable out of the accumulations arising from the Suitors' Fund. This absurd and objectionable anomaly is now got rid of by enacting, that the salaries of the Lord Chancellor and of all the Judges of the Court of Chancery shall be paid out of the Consolidated Fund. It is much to be regretted that this opportunity was not taken to render the salaries of all the

officers of the Court of Chancery as well as the Judges, and the compensations to the holders of abolished offices, payable out of the Consolidated Fund, as strongly pressed upon the Legislature by the Incorporated Law Society, when the measure was under the consideration of the House of Commons.<sup>1</sup> It is to be hoped, however, when the general revision of taxation, now universally expected, comes to be considered by the Legislature and the public, that which the late Lord Langdale emphatically declared to be "one of the first duties of a Government,"—namely, to provide for the due administration of Justice by payment of the necessary expenses out of the public funds,—will not be overlooked nor much longer delayed.

After the 28th of October next, the allowances for copying heretofore paid to the clerk of reports, the clerks of entries, the assistant clerk of affidavits, the clerks of the examiners, and the copying clerks of the Masters, are to cease, and the Lord Chancellor is to regulate, by orders to be made from time to time, the terms upon which copies are to be made and delivered. A general discretion is also vested in the Lord Chancellor, by order, "to vary, reduce, or abolish, all or any of the fees payable in relation to proceedings in the Court of Chancery;" and it is manifestly intended, that hereafter the payment of fees should not be in money, but by stamps, as no less than seven sections of the Act have been framed with the purpose of supplying the necessary machinery for effecting this substitution.

It may be conceded, that the collection of fees, by means of stamps, is more convenient and economical, and in some other

<sup>1</sup> See the Petition of the Incorporated Law Society upon this subject, *ante*, p. 26.

respects less objectionable, than a direct money payment to an officer of the Court; but it must not be forgotten, that by the 5 Geo. 4, c. 41, the stamp duties on law proceedings in the Courts of Great Britain and Ireland were repealed, expressly upon the ground, that those duties operated as taxes upon the administration of Justice. The principle upon which that Act proceeded was well considered, and obtained the unhesitating sanction and assent of every statesman of eminence then living. That principle, however, was broken in upon by the Bankrupt Law Consolidation Act of 1849, by which a stamp duty is payable upon various documents in lieu of fees,<sup>2</sup> and it is now again set aside, in the Act under consideration, without any public discussion or any formal repudiation of the principle which eight and twenty years ago appeared to have met universal approval.

In one respect, the change about to be introduced by the Act 15 & 16 Vict. c. 87, may be regarded as beneficial. It serves to simplify and disembarass the question which we trust will speedily be submitted for the determination of the Legislature. It can no longer be suggested, that litigants merely pay for the support of the establishments appointed to superintend the adjudication of litigated rights. The Stamp Duties, payable by suitors in Chancery, are to be received and collected by the Commissioners of Inland Revenue, precisely in the same manner as the stamp duties payable upon bills of exchange or conveyances, and when received will swell the amount of the national revenue, in the same manner as a payment for Income Tax or House Duty. The naked question, therefore, will be, whether it is just or expedient to raise any portion of the public revenue by a tax on the administration of justice? and if this question be fairly submitted to the public, little doubt need be entertained as to the result.

With respect to the fees payable in relation to *proceedings in lunacy*, the "Suitors in Chancery Relief Act" recognises a principle of great importance, referred to in the Petition of the Incorporated Law Society, already mentioned, as especially and exclusively applicable to that class of cases where a Court of Equity acts as the trustee of property, and the time of officers and clerks is principally occupied in details incident to suits for the due administration of

such property. In cases of this nature, it was suggested, to be just and proper "that a reasonable per-centage or *ad valorem* charge should be paid by the parties beneficially interested" for the care and management of their property. In conformity with this view, section 14 of the New Act invests the Lord Chancellor with power, not only to abolish the fees payable in lunacy, and to direct that the fees not abolished shall be collected by stamps, but also "to direct that in lieu of all or any of such fees, a per-centage or *ad valorem* payment shall be paid on the clear annual incomes of the persons found idiot, lunatic, or of unsound mind, and on the amount of the taxed costs incurred in proceedings in lunacy." The section contains a proviso, that the amount raised by such per-centage or *ad valorem* payment, shall not exceed the sum required to provide for the sums payable under the Acts in force with respect to lunatics, and that a statement of the amount, when settled, shall be laid on the table of the House of Commons.

As many of our readers are aware, the payments in the Lunacy Department, including payments by way of compensations, exceeded the receipts by a sum of above 4,000*l.*, and the deficiency was made good from the excess of fees paid by other suitors in Chancery. This manifest injustice will now, it is presumed, be rectified, and the general body of suitors relieved from a burthen, which upon no just ground ought they to have been compelled to pay. If the principle involved in this alteration be sound and equitable, as it seems in our humble judgment to be, it should not be confined to the estates of lunatics, but extended to the numerous cases in which the authority of the Court of Chancery is required and exercised, not for the purpose of adjudicating upon conflicting claims, but for the superintendence and management of property.

The offices abolished by the Act 15 & 16 Vict. c. 87, are, the keeper or clerk of her Majesty's hanaper, the deputy clerk of the hanaper, the secretary of decrees and injunctions, one of the two gentlemen of the chamber attending the Great Seal, the chaff wax, the deputy chaff wax, the sealer and the deputy sealer, the patentee of the subpoena office, and his deputy, the clerk of affidavits, the assistant clerk of affidavits and the second assistant clerk of affidavits, the clerk of reports, the doorkeeper of the Court of Chancery, the crier of the Court of Chancery, and the office of usher of the Court of Chancery.

<sup>2</sup> 12 & 13 Vict. c. 106, s. 48, and see Schedule C, for list of documents subject to stamps.

The duties heretofore discharged by the secretary of decrees and injunctions will in future be discharged by the clerks of records and writs, and the duties of the hanaper clerk, chaff wax and sealer, by the clerk of the Crown in Chancery and the Lord Chancellor's pursebearer respectively. The execution of the duties of the subpoena office and affidavit office are transferred to the clerks of records and writs, but affidavits may be sworn and declarations made before the clerk of enrolments for the time being, and the duties of the clerk of reports are to be performed by a person appointed for that purpose. The Secretary of Lunacy is henceforth to be called *the Registrar in Lunacy*, and to draw up, enter, and certify to the Accountant-General, all orders made in lunacy, in the same manner as the Registrars of the Court of Chancery have been heretofore accustomed to do. The duties relating to the countersigning notes or cheques drawn by the Accountant-General upon the Bank of England, and signing the copies and extracts issued from the office of the master of reports and entries, heretofore performed by the registrars, are in future to be performed either by the master of reports or the registrars, and the account of suitors' monies kept at the report office is to be discontinued.

The Act contains several provisions, with reference to compensation for offices abolished, and retiring pensions, as well as with respect to the salaries of offices created or continued. Certain arrangements are also made for the prospective management of the Suitors' Fund and Suitors' Fee Fund, which are beside the scope of this notice, and as to which we refer those who are interested to the Act itself.

## THE JUNIOR BAR AND THE ATTORNEYS.

### COUNTY COURT PRACTITIONERS.

THE new Number of the *Law Review* contains an article on the 10th section of County Courts Proceedings Act, 15 & 16 Vict. c. 54, in which the *repeal* of the enactment, limiting the employment of barristers to such as were instructed by attorneys, is hailed with great satisfaction. It does not appear, however, that any considerable number of the members of the Bar sought for this change in the Law. According to the authority of the *Law Review*, only 150 out of 3,500 signed the petition, though it is said 100 more highly approved of it. Why they abstained from

signing does not appear; and as the names of the petitioners have not yet appeared, the value of the document cannot be duly estimated.

It may not be uninteresting to our readers to see the views entertained by an able writer in the *Law Review* on the probable working of the change in question. It seems to be the opinion of the writer that the legislative permission to a barrister to appear in County Courts,—uninstructed by an attorney,—has in those Courts practically repealed the etiquette of the Bar which prevails in all other Courts. "Leaving," says the writer, "his etiquette behind him, he must attend the County Court in obedience to the wishes of the client, the *good of the community*, and the *protection of his own interests*."

The course of business under the new Act is thus indicated:—

"It will naturally follow, that the client will often seek the advice of a barrister in his chambers. The mode of stating the plaint and of conducting the cause, or arranging the defence, will probably form the materials of the consultation. In many cases it may become the duty of the barrister to attend *personally* to the bringing of the suit;<sup>1</sup> in other cases, he will probably direct the party to go and prefer the plaint.

"It must be understood, that the barrister, if first consulted, and subsequently (as he no doubt would be) employed in Court, will consider himself as the *sole lawyer* of his client."

And then comes much serious consideration of the *pecuniary advantages* to be derived by the small minority of the Bar who covertly at the last stage achieved this alteration in their favour.

"It is possible," says the learned gentleman, "that there may be two classes of fees—one for services performed in Court, the other for private audiences and business. A fee of 2l. 4s. 6d. at the utmost may be allowed by the Judge, to the party, upon the taxation of costs, in respect of the barrister's services. We believe that the Judge will have power to make this allowance to the party who has paid these fees, without any further amendment of the Statutes. But fees for private services must be regarded with great care both by party and counsel. They will not be allowed separately, upon taxation, and it will not necessarily follow that the party will employ the counsel whom he has in

<sup>1</sup> Does this mean that learned counsel will *personally* take out plaints or send their clerks?

<sup>2</sup> That is, he will practise in both branches of the Profession, and be master of neither of them. Is the "division of labour" to be at an end?

the first instance consulted.<sup>3</sup> The public must, therefore, be prepared to expect, that the barrister's fees will be required in advance. The barrister, on the other hand, is by no means compelled to exact on all occasions the fee of a guinea. If he can accept half a guinea for a motion, or could have signed a plea for half a guinea, he may possibly take half a guinea retainer. In many cases, the fee, for obvious reasons, will be larger, but a moderate fee will be found most in unison with the state of the times and the institution of the County Courts, and will be the more readily allowed by the Judge. If the public should complain of early and prompt payment, they will do well to remember that, unlike the attorney, the barrister has no remedy for private advice, nor for public labour; whilst on the other hand, *there can be no attorney's bill*. Without meaning to encourage any rivalry between attorney and barrister, it may be worth while for the public to try the experiment, whether the professional merits of the barrister will not be found valuable to them, and whether his dues will not turn out to be less, in a majority of cases, than those of the attorney. After all, the barrister is but remitted to his original rights. It was hoped (vainly indeed) that he would have been protected by the Statute of Small Debts<sup>4</sup> from an undue communication with his real employer. It has turned out, not only that he ought to have had that communication with greater facility, but that the attorney-advocate had stepped in and almost monopolised those privileges which the Legislature and the public had plainly assigned to the counsellor.

"It rests with the public to avail themselves of the advantages afforded them, and (it may be said) with the barrister to win, by moderation, activity, and integrity, the reward of general confidence."

We are thus presented with the views, it may be conjectured, of the leading Petitioners, and shall wait with some curiosity to learn what the Bar in general will say to the course which their younger brethren thus intend to pursue. The writer has very acutely distinguished between the fees of counsel which are recoverable from the unsuccessful party, and the fees which must be paid by the client himself, whether successful or not,—the one being for "services performed in Court, the other for private audiences and business." In the former Acts there were fixed and stated fees, of one

or two guineas, according to the amount of the debt recovered. In the present Act, also, there is power by the 1st section to frame a scale of costs and charges, but it appears to be applicable only to attorneys; and the *Law Review* justly remarks, that "fees for private services must be regarded with great care both by party and counsel." The counsel, indeed, has no remedy to recover his fees; neither has the client any remedy against the counsel for negligence or want of skill. It is not easy to perceive how "the good of the community" can be promoted by authorising members of the Bar, or any class of men, to transact the business of attorneys without responsibility. Whether the public will avail themselves of "the advantages afforded them," remains to be seen.

In a Court for the recovery of "Small Debts," the Legislature limited the fees to be allowed to the lowest possible amount that the humblest practitioner might be induced to accept. To meet this economical view, the learned writer suggests that half-guinea fees be accepted by counsel, on the understanding that they are to be pre-paid. It cannot but be regretted that a minute calculation of shillings and pence thus enters into this important professional question. We would beg leave, once more, to repeat (what has been often urged), that in all cases in which an attorney can be justified in the discharge of his duty to the suitor to employ counsel, he will procure the best he can, and for this he will be remunerated by preparing a brief. He can recover nothing for preparing a brief for another attorney, and the "advocate-attorney" is only entitled to the attorney's fee, and if there are two attorneys that fee must be divided between them.

We are informed that already a case has occurred in which the right of audience was questioned. An attorney of considerable experience, on appearing before one of the Courts, was asked by a young barrister whether he acted for another attorney; but the attorney declined answering the interrogatory, and the Judge allowed him to proceed. We may ask whether it is intended, by this minority of the Bar, to try in each case a preliminary issue on the right of advocacy, and require a written retainer to be produced, and proved by some witness, who saw the suitor sign it? Is the word of the barrister to be taken, and that of the attorney rejected?

We yet hope the higher authorities of the Bar will interpose and prevent any attempts to compel the delivery of briefs, and

<sup>3</sup> This supposes two classes of County Court barristers: the one "to get up the case," with the aid, perhaps, of discarded attorneys' clerks; the other—a slightly higher class—the "Advocate" in Court. But if two barristers may be thus employed, why not two attorneys, although the new enactment attempts to prevent the appearance in Court of any attorney, except the one "acting generally in the action?"

<sup>4</sup> 9 & 10 Vict. c. 95.

the consequent increase of expense to the suitors. There are persons, who,—provoked by the conduct of this part of the Bar,—rejoice at the downward course which they are taking; but we cannot partake in this feeling, and are assured that the great majority of that distinguished body, the Bar of England, repudiate altogether this miserable contention.

## NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

### TRUSTEE ACT. EXTENSION.

15 & 16 VICT. c. 55.

Court of Chancery may make an order for vesting the estate, in lieu of conveyance by a party to the suit after a decree or order for sale; s. 1.

Power to make an order for vesting the estate, on refusal or neglect of a trustee to convey or release; s. 2.

Power to make an order for the transfer or receipt of dividends of stock in name of an infant trustee; s. 3.

On neglect to transfer stock for 28 days, order may be made vesting right to transfer in such person as the Court shall appoint; s. 4.

On like neglect by executor, similar order may be made; s. 5.

Bank of England and Companies to comply with such orders; s. 6.

Indemnity to Bank and Companies so obeying; s. 7.

Power to appoint new trustees in lieu of persons convicted of felony; s. 8.

Power to the Court to appoint new trustees where there is no existing trustee; s. 9.

Chancellor may make orders for appointment of trustees, without it being necessary that it should be made in Chancery, &c.; s. 10.

As to powers of persons intrusted with the care of lunatics; s. 11.

Act to be construed as part of Trustee Act, 1850; s. 12.

All orders made under Trustee Act, 1850, or this Act, to be chargeable with the same Stamp Duty as deeds of conveyance; s. 13.

The following are the sections of the Act:—

An Act to extend the Provisions of "The Trustee Act, 1850." [30th June, 1852.]

Whereas it is expedient to extend the pro-

visions of the Trustee Act, 1850: Be it therefore enacted,

1. That when any decree or order shall have been made by any Court of Equity directing the sale of any lands for any purpose whatever, every person seised or possessed of such land, or entitled to a contingent right therein, being a party to the suit or proceeding in which such decree or order shall have been made, and bound thereby, or being otherwise bound by such decree or order, shall be deemed to be so seised or possessed or entitled (as the case may be) upon a trust within the meaning of the Trustee Act, 1850; and in every such case it shall be lawful for the Court of Chancery, if the said Court shall think it expedient for the purpose of carrying such sale into effect, to make an order vesting such lands or any part thereof, for such estate as the Court shall think fit, either in any purchaser or in such other person as the Court shall direct; and every such order shall have the same effect as if such person so seised or possessed or entitled had been free from all disability, and had duly executed all proper conveyances and assignments of such lands for such estate.

2. That sections numbered 17 & 18 in the Queen's printer's copy of the Trustee Act, 1850, be repealed; and in every case where any person is or shall be jointly or solely seised or possessed of any lands or entitled to a contingent right therein upon any trust, and a demand shall have been made upon such trustee by a person entitled to require a conveyance or assignment of such lands, or a duly authorised agent of such last-mentioned person, requiring such trustee to convey or assign the same, or to release such contingent right, it shall be lawful for the Court of Chancery, if the said Court shall be satisfied that such trustee has wilfully refused or neglected to convey or assign the said lands for the space of 28 days after such demand, to make an order vesting such lands in such person, in such manner and for such estate as the Court shall direct, or releasing such contingent right in such manner as the Court shall direct; and the said order shall have the same effect as if the trustee had duly executed a conveyance or assignment of the lands, or a release of such right, in the same manner and for the same estate.

3. That when any infant shall be solely entitled to any stock upon any trust, it shall be lawful for the Court of Chancery to make an order vesting in any person or persons the right to transfer such stock, or to receive the dividends or income thereof; and when any infant shall be entitled jointly with any other person or persons to any stock upon any trust, it shall be lawful for the said Court to make an order vesting the right to transfer such stock, or to receive the dividends or income thereof, either in the person or persons jointly entitled with the infant, or in him or them together with any other person or persons the said Court may appoint.

4. That where any person shall neglect or refuse to transfer any stock, or to receive the



dividends or income thereof, or to sue for or recover any chose in action, or any interest in respect thereof, for the space of 28 days next after an order of the Court of Chancery for that purpose shall have been served upon him, it shall be lawful for the Court of Chancery to make an order vesting all the right of such person to transfer such stock, or to receive the dividends or income thereof, or to sue for and recover such chose in action, or any interest in respect thereof, in such person or persons as the said Court may appoint.

5. When any stock shall be standing in the sole name of a deceased person, and his personal representative shall refuse or neglect to transfer such stock or receive the dividends or income thereof for the space of 28 days next after an order of the Court of Chancery for that purpose shall have been served upon him, it shall be lawful for the Court of Chancery to make an order vesting the right to transfer such stock, or to receive the dividends or income thereof, in any person or persons whom the said Court may appoint.

6. When any order being or purporting to be under this Act or under the Trustee Act, 1850, shall be made by the Lord Chancellor intrusted as aforesaid, or by the Court of Chancery, vesting the right to any stock, or vesting the right to transfer any stock, or vesting the right to call for the transfer of any stock, in any person or persons, in every such case the legal right to transfer such stock shall vest accordingly; and the person or persons so appointed shall be authorised and empowered to execute all deeds and powers of attorneys, and to perform all acts relating to the transfer of such stock into his or their own name or names, or otherwise, to the extent and in conformity with the terms of the order; and the Bank of England and all companies and associations whatever, and all persons, shall be equally bound and compellable to comply with the requisitions of such person or persons so appointed as aforesaid, to the extent and in conformity with the terms of such order, as the said Bank of England, or such companies, associations, or persons would have been bound or compellable to comply with the requisitions of the person in whose place such appointment shall have been made.

7. That every order made or to be made, being or purporting to be made under this or the Trustee Act, 1850, by the Lord Chancellor intrusted as aforesaid, or by the Court of Chancery, and duly passed and entered, shall be a complete indemnity to the Bank of England, and all companies and associations whatsoever, and all persons, for any act done pursuant thereto; and it shall not be necessary for the Bank of England, or such company or association, or person, to inquire concerning the propriety of such order, or whether the Lord Chancellor intrusted as aforesaid, or the Court of Chancery, had jurisdiction to make the same.

8. That when any person is or shall be jointly or solely seised or possessed of any lands

or entitled to any stock upon any trust, and such person has been or shall be convicted of felony, it shall be lawful for the Court of Chancery, upon proof of such conviction, to appoint any person to be a trustee in the place of such convict, and to make an order for vesting such lands, or the right to transfer such stock, and to receive the dividends or income thereof, in such person to be so appointed trustee; and such order shall have the same effect as to lands as if the convict trustee had been free from any disability, and had duly executed a conveyance or assignment of his estate and interest in the same.

9. That in all cases where it shall be expedient to appoint a new trustee, and it shall be found inexpedient, difficult, or impracticable so to do without the assistance of the Court of Chancery, it shall be lawful for the said Court to make an order appointing a new trustee or new trustees, whether there be any existing trustee or not at the time of making such order.

10. In every case in which the Lord Chancellor, intrusted as aforesaid, has jurisdiction under this Act, or the Trustee Act, 1850, to order a conveyance or transfer of land or stock, or to make a vesting order, it shall be lawful for him also to make an order appointing a new trustee or new trustees, in like manner as the Court of Chancery may do in like cases, without its being necessary that the order should be made in Chancery as well as in Lunacy, or be passed and entered by the Registrar of the Court of Chancery.

11. That all the jurisdiction conferred by this Act on the Lord Chancellor, intrusted by virtue of the Queen's Sign Manual with the care of the persons and estates of lunatics, shall and may be had, exercised, and performed by the person or persons for the time being intrusted as aforesaid.

12. That this Act shall be read and construed according to the definitions and interpretations contained in the second section of the Trustee Act, 1850, and the provisions of the said last-mentioned Act (except so far as the same are altered by or inconsistent with this Act) shall extend and apply to the cases provided for by this Act, in the same way as if this Act had been incorporated with and had formed part of the said Trustee Act, 1850.

13. That every order to be made under the Trustee Act, 1850, or this Act, which shall have the effect of a conveyance or assignment of any lands, or a transfer of any such stock as can only be transferred by stamped deed, shall be chargeable with the like amount of stamp duty as it would have been chargeable with if it had been a deed executed by the person or persons seised or possessed of such lands, or entitled to such stock; and every such order shall be duly stamped for denoting the payment of the said duty.

## NOTICES OF NEW BOOKS.

*Chancery Cases and Dicta, also Notes from MSS. Ancient and Modern, with occasional remarks; and Chancery Miscellanies.* By CHARLES PURTON COOPER, Esq., Q.C. London: Butterworths.

WE noticed some time ago the "Chancery Miscellanies" of Mr. Purton Cooper,—a work which abounds in curious, interesting, and learned matter; and have now to direct the attention of our readers to a new and additional series, called "Chancery Cases and Dicta," the first number of which has just been published.

These Cases and Dicta, ancient and modern, with notes from the manuscripts of the learned author, are intended to form part of the same work. The further progress of the Chancery Miscellanies will be suspended until the Cases and Dicta have reached the point at which its companion has arrived. The two series will then be united.

The First Number of the Chancery Cases and Dicta, comprises no less than 33 decisions or points, some of which are stated fully and others very concisely. We shall select the case of *Payne v. Owen*, decided by Sir John Leach, in November, 1823, when Vice-Chancellor, relating to the costs payable where a solicitor has filed a bill without authority:—

"Where a bill is ordered to be taken off the file, on the ground that the solicitor had no authority to file it, I am of opinion that the proper order is, that the costs of filing the bill be paid by the solicitor who filed the same, and that the costs of the defendants should be paid in the first instance by the plaintiff, and then that the solicitor should repay such costs to the plaintiff. This is in a case where no doubt is suggested that the plaintiff would be able to recover from the solicitor the costs which shall be so paid to the defendants. What ought to be done in a case where, from the solicitor having absconded, or from other circumstances, it is plain there is no chance of the unfortunate plaintiff, whose name has been improperly used, recovering any costs at all does not seem to have been determined. It by no means seems clear that in those circumstances he ought to be ordered to pay to the defendants their costs. Is it not a common misfortune that has befallen the plaintiff and the defendants? Lord Eldon did not determine any such point in *Wade v. Stanley*, 1 Jac. & W. 674. Indeed, from the order, he does not appear even to have determined that the solicitor should repay to the plaintiff, whose name he had used without authority, the defendant's costs of the application, and which costs such plaintiff was nevertheless ordered to pay. Where, however, there is no

suggestion that the solicitor is not of ability to pay all the costs, the Court can have no hesitation as to the form of the order to be made."

These Cases and Dicta will of course be more professionally useful than the Miscellanies, but we hope the latter will also be continued in due time, and contain the results of the researches of the learned writer amongst the antiquities and curiosities of our legal literature.

## INCORPORATED LAW SOCIETY.

ANNUAL REPORT OF THE COUNCIL TO THE GENERAL MEETING, 15th JUNE, 1852.

THE Council, in submitting to the Annual Meeting their usual statement, need scarcely remind the members of the Society, that the period through which they have passed since the last Report, has been unexampled in the number and importance of the changes made, or contemplated, in the constitution of Courts of Justice, and in the rules which the suitors are to observe in prosecuting their claims. The crisis is peculiar, and has produced, by means of commissions, reports, pamphlets, and, above all, by bills introduced to the attention of the legislature, a mass of evidence, plans of improvement, and legislative measures, all directed to the object of law reform. This has thrown upon the Council the necessity for constant vigilance, and a greater degree of labour, in dealing with the important subjects continually brought before them, than has ever been required at any former time since the Society was founded. With this remark, the Council will proceed to detail the measures adopted by them since the last General Meeting.

I. LAW BILLS IN PARLIAMENT.<sup>1</sup>

The Council have, at numerous sittings, considered the several Bills before Parliament relating to alterations in the law. Those relating to the Court of *Chancery* were the following:—

1st. The Masters in Chancery Primary Jurisdiction. 2nd. The Lords Justices of Appeal. 3rd. The Suitors' Relief. 4th. The Masters in Chancery Abolition, and 5th. The Improvement of the Jurisdiction in Equity.

The *Masters Jurisdiction in Equity Bill*, which occupied much consideration last session, was designed to confer on the Masters larger powers than they previously possessed,

<sup>1</sup> Several of the Bills here noticed which were before Parliament when this report was made, have since become law; but still the remarks are useful.—Ed.

and primary jurisdiction in a large class of cases.

That Bill has been superseded by the Bills of the present session, under which the office of Master is to be abolished, and the judicial business heretofore performed by the Masters will be transferred to the Judges sitting in Chambers.

*Equity Practice.*—The members are aware, from the circular addressed to each of them, and from the report of last year, that the Council felt it to be their duty to devote a very large share of attention to the proposed alterations and amendments in the jurisdiction and course of procedure in the Court of Chancery.

The Committee on Equity Practice, to whom the subject was confided, consisted of fifteen members of the Council, aided by a like number of other members of the profession, practising extensively in the Courts of Equity, and several of whom were examined under the Chancery Commission on particular branches of the practice. The objects aimed at by the Council and the Committee were, to ascertain the defects in equity procedure, and to suggest alterations adapted to remedy those defects.

After numerous meetings during several months, the materials for the report were collected and considered, and the Council are indebted to three of their members for digesting and arranging the various suggestions, and preparing the report which was finally settled by the whole Committee, and approved by the Council in Dec. last. They trust that the suggestions offered in the report may be found useful, not only to the commissioners but the legislature, in the consideration of a complex and difficult subject, the importance of which, to the community, can scarcely be over estimated.

The Council presented copies of their report to the Commissioners, to the Equity Judges, the Masters in Chancery, and other officers of the Court, and they deemed it necessary also to transmit a copy to every member of the Society, all of whom are deeply interested, as well for their clients as themselves, in the fitness and success of the alterations proposed to be effected in the system of pleading, the course of practice, and the mode of taking evidence in suits in Chancery.

The Bills which have been brought into Parliament for the purpose of carrying into effect this extensive change in the mode of administering justice in our Courts of Equity, have been under the anxious consideration of the Council, assisted by their Committee, and they have, from time to time, made such suggestions as appeared to them requisite for attaining the objects both of the public and the profession.

The Council may also here mention, that on the commencement of the intended measures in Parliament by the present Lord Chancellor, they submitted their Equity Report to his lordship, and proposed that a deputation should attend him on the subject, particularly in reference to the necessity of appointing additional Judges, the practical efficiency of the

officers to be appointed as chief clerks; and the necessity of new arrangements with respect to the costs of solicitors.

*Relief of Suitors.*—The numerous complaints which have long existed against the expense, as well as the delay of suits in Chancery, arise in a considerable degree from the enormous amount of the fees paid by the suitors of the Court, which are, for the most part, advanced in the first instance, by solicitors. The annual amount of this direct taxation on the administration of justice in Chancery, is nearly 140,000*l.*, and to this must be added about 70,000*l.* a year more taken out of the surplus interest of the Suitors' Fund, making together upwards of 200,000*l.* a year. Against the continuance of this grievance, the Council have taken every fitting occasion to remonstrate. Two of the Bills before Parliament, at the close of the last, and the commencement of the present session, have afforded opportunities to reiterate the claim for relief at the hands of the Government.

Thus, in the Bill for establishing a new Court of Appeal, it was proposed to provide that the salary of 6,000*l.* to be paid to each of the Lords Justices of that Court, should be paid out of the interest of the dividends arising from the Suitors' Fund. Now the salaries of the Judges of the Superior Courts of Common Law, it is well known, are paid out of the Consolidated Fund, and the Council submitted that the salaries of the Judges of the Courts of Equity ought in like manner to be paid by the community at large. And they suggested, that if the House should deem it right that the interest arising from the Suitors' money should be appropriated towards the expenses of administering justice in the Court of Chancery, such interest should be applied in diminution of the fees paid upon the proceedings in Equity, and not in defraying the salaries of the Judges: and, that if any such salaries were charged on the Consolidated Fund, the Suitors of the Court might be immediately relieved from a considerable amount of taxation to which they are now subjected.

The Council were unsuccessful in resisting this addition to the burthens of the suitors in the last session; but they congratulate the members that at length in the present session a Bill has been introduced by the Government "for the Relief of the Suitors of the High Court of Chancery," in which the great principle, that the Judges should be paid out of the public purse is clearly recognised. In this Bill it is proposed to provide that the salaries of the Judges of the Court of Chancery should be paid out of the Consolidated Fund.

The Council proposed that this just and beneficial relief to the suitors should be extended, and that the salaries of many, if not all the officers of the Court, and the expenses of the establishment for conducting the business of the Court, should also, upon the same principle, be paid out of the Consolidated Fund; and they pointed out that by the 5th Geo. 4, c. 41, the stamp duties on law proceedings in the Courts of Great Britain and Ireland were

repeated as taxes upon the administration of justice, and they referred to the evidence of Lord Langdale before the select Committee of the House on the Courts of Law and Equity in 1841, in which he declared his opinion against such taxes in the following terms:—

“One of the first duties which the Government owes to the country is to provide for the due administration of justice, and I think that all expenses ought to be defrayed by the Government in the discharge of that duty.”

They represented that the Pensions and Compensations included in the payments out of the dividends of the Sutors' Fund, together with the salaries of the officers attending the Court, and office expenses, amounted to 17,706*l.* 5*s.* 7*d.*; and that out of the fees annually imposed on the Sutors, the compensation to the holders of abolished offices, and to others whose salaries are reduced, are paid, amounting, with office expenses, to 49,867*l.* 10*s.* 2*d.*

If the salaries of the Judges and their immediate officers, and the pensions and compensations, with the office expenses, were defrayed by the State, the sutors would be relieved to the extent of 100,000*l.* a year.

It must be admitted, however, that in a considerable class of cases in the Courts of Equity, wherein the Court acts as a Trustee of the property in question, and where the time of officers and clerks is principally occupied in the details incident to suits for the due administration of such property, it is but just and proper that a reasonable per centage, or *ad valorem* charge, should be paid by the parties beneficially interested therein for the care and management thereof. Now the average of the annual payments in Court is 7,000,000*l.*, and the transfer of stock of an equal amount; and in order to raise a fund for the payment of the officers and clerks engaged in the business of those suits, a very small per centage would enable the Court to dispense with all other fees.

The *Common Law Procedure Bill*, prepared under the direction of the Common Law Commissioners for the purpose of simplifying the Practice and System of Pleading in the Superior Courts of Common Law, has been much considered by the Council.

They conceive that under the amendments proposed to be effected by this Bill, it will be practicable to recover debts in *undefended* actions in the Superior Courts, even of small amount, at a less expense than is now incurred in the County Courts.

The Bill provides that the first process shall comprise such statement or particulars of the demand as will inform the defendant of the nature of the action; and if he has no defence, the expense of a declaration is rendered unnecessary. After a certain number of days, judgment may be signed, with a stay of execution for a further period; and thus, in an *undefended* action, judgment by default may be obtained at a very moderate amount of costs.

If creditors had the choice of suing their

debtors, as well in the Superior Courts as in the County Courts, for sums between 10*l.* and 20*l.*, it is believed that they would, in the majority of cases, resort to the Superior in preference to the County Courts. The advantage to the creditor of this preference would be, that he would avoid the loss of time and inconvenience of going to the office to take out the plaint, and much more of personally attending the Court on the return of process. In the Superior Courts the whole business would be done by the attorney. He would conduct the several proceedings, and transact all that is now done by the clerks of the County Courts.

It is a great hardship and public loss, that a Suitor should be obliged to attend by himself, or his witnesses, to prove his demand, although when the cause is called on the defendant makes no opposition to the amount, but merely requires time to pay it, or dishonestly puts off the payment until compelled by legal proceedings and execution. So, also, when the debt is paid by numerous instalments, the expense and trouble to Sutors in the County Courts are very considerable, and which are altogether avoided in the Superior Courts.

The plaintiff, moreover, is not allowed anything for his attendance on the hearing, or at any stage of the case; and, if he employ an attorney, he has frequently to pay extra costs for preparing for the hearing, as the defendant is only liable to the fee of 10*s.* or 15*s.* for the attorney's attendance in Court; besides that, it is in the discretion of the Judge to disallow to the successful party his costs. In the Superior Courts there would rarely be any extra charge, unless a defence were made and a trial took place, which, on the average, occurs in less than two actions out of every hundred.

It may be observed also, that the public in general labour under a delusion as to the supposed cheapness and expedition of the County Courts. It is scarcely credible, but the returns to Parliament clearly prove the fact, that the expense of recovering debts in those Courts is, on the average, nearly fifty per cent. In the year 1850, the fees paid by the sutors amounted to 252,500*l.*, whilst the sums received by the Court from the defendants in or towards the discharge of the debts sued for, amounted only to 527,064*l.*

Suggestions on this Bill have been communicated to the Commissioners and to Lord Lyndhurst and Lord Truro, and a deputation from the Council were favoured by Lord Lyndhurst and some of the Commissioners with an interview; and, subsequently, the Council suggested several clauses for carrying into effect the proposed amendments, restoring to the Superior Courts their jurisdiction in actions for 10*l.* and upwards, and extending the provisions of the Law Amendment Act as to writs of trial for sums from 20*l.* to 50*l.*

A Bill was brought in early in the session for regulating the *Fees of the Common Law Courts*, the object of which was evidently beneficial. It proposed to abolish some appa-

rently useless offices, and provided that the Clerks of assize, the Judges' clerks and criers, and the Marshalls of the three Courts, should be paid by salaries instead of fees, and that the fees now received by such officers be paid over to the Treasury.

There was one topic, however, connected with this Bill which called for remark, as being a frequently repeated evil in modern legislation, and one of growing importance. It was proposed to enact that the fees of the officers should be paid over to the Treasury, but no check was provided to ensure a correct return. The penalty of 20*l.* imposed on any officer not duly accounting, could have little or no effect on a person through whose hands hundreds or thousands might pass without any check. The Council, therefore, submitted that some scheme should be devised applicable to all such cases for ensuring an accurate account, in which the suitors have a decided interest; for everything that tends towards ensuring this, must ultimately have the effect of reducing the fees paid by the suitors.

A power is given by the Bill to the Treasury to fix and vary the salaries of the officers without any restriction, except that in some cases the salaries shall not exceed the amount of the fees. Some limit, it was suggested, should be imposed, or some rule laid down, by which the regulations might be brought under supervision, and be made subject to control. And at any rate these regulations should be published from time to time in a more effectual way than by merely laying them before Parliament at the beginning of every session; and, if possible, they should be published or brought under the supervision of parties competent to judge of their propriety before the time fixed for their coming into operation.

This Bill was one of the measures of the last Government, and a new Bill called the "*Nisi Prius Officers'*" Bill, has been recently introduced by the present Attorney-General, and which is probably intended to supersede the other. It provides for a permanent establishment of officers to perform the duties at *Nisi Prius* in the Superior Courts of Common Law, and at the Judges' Chambers, and for the payment of such officers by salaries, and to abolish other offices in those Courts. On the latter Bill a petition has been presented to the House of Commons on the part of the Society.

**County Courts' Extension**—In the Bill of last session for the extension of the County Courts, it was proposed to authorize the Court of Chancery to send to them accounts for investigation, inquiries to be made, witnesses to be examined, pleas and answers taken, and affidavits sworn; and in the general expectation that the Bill would pass, the Council presented a petition to the House of Commons containing several suggestions for diminishing the expense and expediting the proceedings in suits in Chancery, for the examination of witnesses *vidé voce*, not only before the County Court Judges, but before Commissioners in Bankruptcy, or the Examiners or special Com-

missioners, in order that evidence might be adduced on motions, petitions, and other applications in Chancery, and for the reception of affidavits sworn abroad.

By these means it appeared probable that the County Courts and other local tribunals might afford aid in matters before the Court of Chancery; but numerous other modifications were suggested from other quarters, and the Bill underwent so many alterations, and was returned to the House of Lords so late in the session, that it was necessarily postponed.

The bill of the present session has also been considered. At the request of the Lord Chancellor, the clauses relating to inquiries from the Court of Chancery have been struck out, and various amendments have been proposed in the remaining clauses.

**Registration of Assurances.**—At the last Annual Meeting, the Council reported their views on the Bill for the Registration of Assurances, and stated the course they had taken whilst the Bill was before the House of Lords. On its arrival in the Commons, with the alterations effected in it by their lordships, the Council felt it to be necessary again to petition in the name of the Society, stating the several objections to the project: its inadequacy to provide against the exaggerated evil it proposed to remedy, the erroneous impressions of its supposed benefits in facilitating and expediting the transfer of land,—on the contrary, showing that for many years to come, if not for all time, the expense would be enhanced, the danger of fraud, negligence, and error not diminished, if not increased,—and more especially showing the impracticability of the plan for any useful purpose in the present state of the Law of Real Property. The Council suggested amendments, if the Bill were proceeded with, and recommended, if Parliament determined to have a Registration, that the experiment should be first tried in the county of Middlesex, where a Register being already established, furnished an opportunity of trying the value and efficacy of the proposed improvement. The Petition was presented on behalf of the Society by Sir James Graham, who favourably noticed this Society in explaining the scope of the Petition, and calling the attention of the House to the prominent objections stated therein.

In addition to the Petition, which was printed and circulated, the Council prepared a Statement with reference to the recommendations of the Real Property Commissioners, and demonstrating that the Bill in its then shape not only received no support from the Report of the Commissioners, but was in truth, by anticipation, strongly condemned by the learned Commissioners, especially in the practical part of the scheme (with which the Solicitors have to deal), on which head the Commissioners say, "If the Index do not afford facility of search, and if it do not avoid all probable chance of error, the Registration will become comparatively useless, and may become mischievous;" and they added that "it is only by

the application of a Public Map to Registration that any hope can be entertained of a beneficial result." Now the provisions for Maps and a Land Index were expunged from the Bill as impracticable, and the only substitute was an alphabetical Index of the names of grantors.

Besides the more prominent, if not more important, class of Bills thus adverted to, the Council have also given their attention to other measures bearing on the administration of Justice, or the Law of Property. Amongst these are the Bills relating to the District Courts of *Bankruptcy*; *Lunacy Proceedings*; *Charitable Trusts*; the *Enfranchisement of Copyholds*; *Commons Inclosure Extension*; the *Trustees' Act*; and the *Law of Patents*.

In so far as any of these projected Amendments of the Law were calculated to affect the duties and responsibilities of Attorneys and Solicitors, the Council have felt it their duty to examine and consider the nature and effect of the proposed enactments, and to offer such objections or modifications as the subjects themselves, and the fair claims of the Solicitor, appeared to require.

The proposed amendment of the Law of *Wills*, and particularly the regulations enjoined by Statute in regard to the mode of executing and attesting Testamentary Papers, called for the careful attention of the Council. The Bill since its introduction has undergone several alterations, and at present the Council have not deemed it necessary to prepare any Petition on the subject. They have also considered the Bill "for consolidating and amending the Statutes relating to the Assessment and Collection of County Rates," which was brought in by Mr. Freshfield, and empowers the Committee to appoint a clerk to assist them in the execution of their duties under the provisions of the Act, and they suggested that the interests of the Public would be promoted by specifying the legal qualifications of the Clerk. It was submitted that the duties of the office would be more efficiently performed by persons having the professional knowledge, experience, and habits of business of Attorneys and Solicitors; and the Council proposed that an addition should be made to the fourth clause to the effect "that such clerk be an Attorney or Solicitor on the Rolls of one of the Superior Courts of Law or Equity."

[To be continued.]

## THE NEW PARLIAMENT.

### LAWYERS RETURNED.

Adair, Hugh Edward, *Ipswich*.  
 Aglionby, Henry Aglionby, *Cockermouth*.  
 Armstrong, Rt. Baynes, Q. C., *Lancaster*.  
 Atherton, William, Q. C., *Durham (City)*.  
 Baines, Rt. Hon. Matthew Talbot, Q. C.,  
*Leeds*.  
 Bankes, Right Hon. George, *Dorsetshire*.  
 \*Barrow, Wm. Hodgson, *Nottinghamshire (S)*.

\*Benbow, John, *Dudley*.  
 Bethell, Richard, Q. C., *Aylesbury*.  
 Bland, Loftus H., *King's County*.  
 Bouverie, Hon. Edward P., *Kilmarnock*.  
 Bowyer, Geo., *Dundalk*.  
 \*Bremridge, Richard, *Barnstaple*.  
 Brockman, Edward Drake, *Hythe*.  
 Butt, George Medd, Q. C., *Weymouth*.  
 Butt, Isaac, *Youghal*.  
 Cabbell, Benjamin Bond, *Boston*.  
 Cairns, Hugh M'Calmont, *Belfast*.  
 Carter, Samuel, *Tavistock*.  
 Chambers, Montagu, Q. C., *Greenwich*.  
 Chambers, Thomas, *Hertford*.  
 Cobbett, John Morgan, *Oldham*.  
 \*Cobbold, John Chevallier, *Ipswich*.  
 Cockburn, Sir Alexander James Edmund,  
 Q. C., *Southampton*.  
 Cogan, W. H. F., *Kildare (County)*.  
 Collier, Robert P., *Plymouth*.  
 Coles, Henry Beaumont, *Andover*.  
 Crowder, Richard Budden, Q. C., *Liskeard*.  
 \*Davison, R., *Belfast*.  
 Duffy, Chas. G., *New Ross*.  
 Ewart, William, *Dumfries (District)*.  
 Farrer, James, *Durham (South)*.  
 Fitzgerald, John D., Q. C., *Ennis*.  
 Follett, B. Spencer, Q. C., *Bridgewater*.  
 Forster, Sir G. M., Bart., *Monaghan, County*.  
 \*Freshfield, J. W., *Penryn and Falmouth*.  
 George, John, Q. C., *Wexford (County)*.  
 Gipps, H. P., *Canterbury*.  
 Goold, Wyndham, *Limerick (County)*.  
 Gower, Hon. F. Leveson, *Stoke-on-Trent*.  
 Granger, Thos. Colpitts, Q. C., *Durham (City)*.  
 Grogan, Edward, *Dublin (City)*.  
 \*Hadfield, George, *Skeffield*.  
 Hayter, Right Hon. Wm. Goodenough,  
 Q. C., *Wells*.  
 Headlam, Thomas Emerson, *Newcastle-upon-Tyne*.  
 Hildyard, Robert Charles, Q. C., *Whitehaven*.  
 Hogg, Sir James Weir, Bart., *Honiton*.  
 Ingham, R., Q. C., *South Shields*.  
 Inglis, Sir Robert Harry, Bart., *Oxford (University)*.  
 Keating, H. S., Q. C., *Reading*.  
 Kelly, Sir Fitzroy, (Sol.-Gen.), *Suffolk (East)*.  
 Kennedy, Tristram, *Louth (County)*.  
 Keogh, William, Q. C., *Athlone*.  
 \*Laselett, Wm., *Worcester*.  
 \*Layard, Henry Austen, D.C.L., *Aylesbury*.  
 Lefevre, Right Hon. Charles Shaw, *Hants (North)*.  
 Lowe, Robert, *Kidderminster*.  
 Macaulay, Kenneth, Q. C., *Cambridge (Borough)*.  
 Macaulay, Right Hon. T. B., *Edinburgh (City)*.  
 M'Mahon, Patrick, *Wexford*.  
 Maguire, John F., *Dungarvan*.  
 Malins, Richard, Q. C., *Wallingford*.  
 Massey, W. N., *Newport*.  
 Mills, Arthur, *Taunton*.  
 Monck, Right Hon. Viscount, *Portsmouth*.  
 Moncreiff, Rt. Hon. James, *Leith*.  
 Moore, R. S., *Armagh*.  
 \*Mullings, Joseph Randolph, *Cirencester*.

Murphy, Francis Stack, S. L., *Cork (City)*.  
 \*Murrrough, John Patrick, *Bridport*.  
 Napier, Joseph, (Att.-Gen. Irel.), *Dublin University*.  
 \*Neeld, Joseph, *Chippengham*.  
 \*O'Brien, Cornelius, *Clare*.  
 O'Brien, Patrick, *King's County*.  
 \*O'Connell, Maurice, *Tralee*.  
 Peel, Frederick, *Bury (Lancashire)*.  
 Phillimore, J. G., Q. C., *Cheltenham*.  
 Phinn, Thomas, *Bath*.  
 \*Potter, Robert, *Limerick*.  
 Pugh, David, *Montgomery (District)*.  
 Roebuck, John Arthur, Q. C., *Sheffield*.  
 \*Sadleir, John, *Carlton (Borough)*.  
 Scully, Francis, *Tipperary*.  
 Scully, Vincent, Q. C., *Cork (County)*.  
 Seymour, William Digby, *Sunderland*.  
 Shee, William, S. L., *Kilkeny (County)*.  
 Stapleton, John, *Berwick*.  
 Stuart, John, Q. C., *Bury St. Edmunds*.  
 Tancred, Henry William, Q. C., *Banbury*.  
 Thesiger, Sir Frederick, *Stamford*.  
 Villiers, Hon. C. P., *Wolverhampton*.  
 Vivian, John Ennis, *Truro*.  
 Walpole, Rt. Hon. Spencer Horatio, Q. C., *Midhurst*.  
 Whiteside, Right Hon. James, (Sol.-Gen. Irel.), Q. C., *Enniskillen*.  
 Wigram, Loftus Tottenham, Q. C., *Cambridge (University)*.  
 Wood, Sir William Page, *Oxford (City)*.  
 Wortley, Rt. Hon. James Archibald Stuart, Q. C., *Buteshire*.

The 15 names marked thus \*, are or have been solicitors. The other 83 are or have been barristers, making in all 98 lawyers.

#### UNSUCCESSFUL CANDIDATES.

The following 30 Law Members of the last Parliament have not been returned:—

Anstey, Thomas Chisholm, *Bedford*.  
 Baldwin, Charles Barry, *Totness*.  
 Bernal, Ralph, *Rochester*.  
 Beat, John, *Kidderminster*.  
 Bunbury, Edwd. Herbert, *Bury St. Edmunds*.  
 Butler, Pierce Somerset, *Kilkenny (County)*.  
 Cardwell, Edward, *Liverpool*.  
 Collins, Thomas, *Knaresborough*.  
 Craig, Sir William Gibson, Bart., *Edinburgh*.  
 Dundas, Right Hon. Sir David, *Sutherlandshire*.  
 Ellis, John, *Lancaster*.  
 Evans, John, Q. C., *Haverfordwest*, and *Pembroke (District)*.  
 Grattan, Henry, *Meath (County)*.  
 Grey, Rt. Hon. Sir Geo., Bart., *Northern-berland (N)*.  
 Greene, Thomas, *Lancaster*.  
 Hardcastle, Joseph Alfred, *Colchester*.  
 Hatchell, Right Hon. John, *Windsor*.  
 Hobhouse, Thos. Benjamin, *Lincoln (City)*.  
 \*Hodgson, William Nicholson, *Carlisle*.  
 Horsman, Edward, *Cockermouth*.  
 Lewis, George Cornewall, *Herefordshire*.  
 Lock, James, *Wick (District)*.

Nicholl, Right Hon. John, D.C.L., *Cardif*.  
 O'Brien, John, S. L., *Limerick (City)*.  
 O'Connell, Morgan John, *Kerry*.  
 Palmer, Roundell, Q. C., *Plymouth*.  
 Romilly, Right Hon. Sir John, *Devonport*.  
 Stanford, John Frederick, *Reading*.  
 Trelawny, John Salusbury, *Tavistock*.  
 Watson, William Henry, Q. C., *Newcastle-upon-Tyne*.

The following 42 New Candidates for Parliamentary honours have not been successful:—

Allen, Robert, S. L., *Stafford (Borough)*.  
 Bayford, Augustus Frederick, D.C.L., *Aylesbury*.  
 Barnes, P. Edward, *Penryn and Falmouth*.  
 Bovill, William, *Lewes*.  
 Cadogan, Hon. F., *Bridgnorth*.  
 Channell, W. F., S. L., *Beverley*.  
 Cleasby, A., *Surrey (East)*.  
 Cox, Edward William, *Worcestersbury*.  
 Eecott, B., *Plymouth*.  
 Evans, Cooke, *Stafford (Borough)*.  
 Farsyde, G. J. W., *Whitby*.  
 Fenwick, Henry, *Sunderland*.  
 Follett, Robert B., *Lichfield*.  
 Gaselee, S., S. L., *Portsmouth*.  
 Greene, J. G. J., *Wilton*.  
 Huddleston, J. W., *Worcester (City)*.  
 \*Kinderley, George Herbert, *Tralee*.  
 Kinglake, A. W., *Bridgwater*.  
 Kinglake, J. A., S. L., *Wells*.  
 Lee, John, LL.D., *Buckinghamshire*.  
 Lewis, William David, *Pontefract*.  
 Liddell, Hon. A. F. O., *Gateshead*.  
 Loch, George, *Manchester*.  
 Locke, John, *Hastings*.  
 Mellor, J., Q. C., *Warwick (Borough)*.  
 Newton, Augustus, *Ripon*.  
 Overend, W., *Sheffield*.  
 Palmer, Geoffrey, *Leicester*.  
 Pashley, Robert, Q. C., *Lyme Regis*.  
 Paull, Henry, *St. Ives*.  
 Phillimore, Robt. Joseph, D.C.L., *Tavistock*.  
 Ridley, George, *Northumberland (South)*.  
 Robinson, Augustin, *Shrewsbury*.  
 Rolt, John, Q. C., *Bridport*.  
 Romaine, W. G., *Marlow (Great)*.  
 Slade, F. W., Q. C., *Dorchester*; and *Salisbury*.  
 Smith, John Sidney, *Bodmin*.  
 Sturgeon, C., *Nottingham (Borough)*.  
 Wateley, William, Q. C., *Bath*.  
 Wilde, James, *Leicester*.  
 Wilkins, Charles, S. L., *Evesham*.  
 \*Wire, David Williams, *Greenwich*.

Those marked thus \*, are or have been solicitors.

[We are indebted to *The Freeman's Journal* for several names of Irish Law Representatives, of which we were not previously aware, including three solicitors.]

## PRIVILEGED COMMUNICATION.

### SERVANT'S CHARACTER.

On a trial, before Mr. Justice *Wightman*, it appeared that the plaintiff having been cook in Mr. Slade's family, a lady named Malcolmson applied to know what character she bore while in defendant's service. At the time of this application, Mrs. Slade was ill; Mr. Slade answered the application, and gave the plaintiff a good character; and Mrs. Malcolmson took the plaintiff into her service. Mrs. Slade recovered, and wrote a letter to Mrs. Malcolmson, in which she made inquiries as to the character of another servant, who had been in Mrs. Malcolmson's service as cook. In her letter she asked about her dealings with respect to the meat and other things required in the kitchen, and ended as follows:—"I mention this particularly, having discovered that I have been much imposed on in this way a short time ago." Mrs. Malcolmson called on Mrs. Slade, and after giving her the required information, asked if in the latter part of the letter she alluded to the plaintiff (who had then been in Mrs. Malcolmson's service about six weeks). Mrs. Slade replied that she did, and then, in answer to questions put to her, spoke the words complained of, which were to the effect that she suspected that the conduct of the plaintiff when in her service was not honest. After the plaintiff had begun to take legal steps against the defendants, Mrs. Slade wrote to Mrs. Malcolmson a letter expressing her vexation, and saying:—"You will remember that I imputed no dishonesty; for of that I have no knowledge." The defendants' counsel contended, that the words were spoken under such circumstances as to be a privileged communication; and that there was no evidence of malice. The learned Judge gave leave to move for a nonsuit. The jury, in answer to questions by him, found that the first letter was intended to allude to the plaintiff, and to invite inquiry, and returned a verdict for the plaintiff, damages 40s.

On the motion to set aside the verdict and enter a nonsuit,—

Lord *Denman*, C.J. "The only doubt in this case arose from the fact, that the inquiries originated with the female defendant. It appears

that, having occasion to write to the plaintiff's mistress, she made an allusion to the plaintiff, which induced the questions, in answer to which the words were spoken. I think Mrs. Slade was at liberty, under the circumstances, to allude to the plaintiff. I think the privilege which protects a master in giving a character, lasts as long as anything is discovered, before unknown to the master; as, for instance, if I give a good character to a servant, and next day discover that the servant is dishonest, surely in such a case it becomes my duty to communicate my discovery to the person to whom I have given the character. In the present case, there is no evidence of malice. I think the learned Judge did right in reserving leave to enter a nonsuit, and that we should not do right if we did not enter one." *Gardner v. Slade*, 13 Q. B. 796.

## CHIEF CLERKS IN CHANCERY.

We understand that the following gentlemen have been appointed to the Office of Chief Clerk to the Judges of the High Court of Chancery, under the Act for Abolishing the Office of Master in Chancery:—

### Master of the Rolls' Clerks:

George Hume, Esq.  
George Whiting, Esq.\*

### Vice-Chancellor Turner's Clerks:

Richard Bloxam, Esq.  
Henry Leman, Esq.\*

### Vice-Chancellor Kindersley's Clerks:

Frederick Erasmus Edwards, Esq.\*  
Charles Pugh, Esq.\*

### Vice-Chancellor Parker's Clerks:

Alfred Hall, Esq.  
Robert William Peake, Esq.

The four gentlemen marked thus \* have been Chief Clerks to Masters in Chancery. The other gentlemen are solicitors of more than 10 years' practice.

## RECENT DECISIONS IN THE SUPERIOR COURTS.

### AND SHORT NOTES OF CASES.

#### Lord Chancellor.

*In re St. James's Club, ex parte Greenway.*  
July 8, 9, 1852.

#### WINDING-UP ACTS. — CLUB. — ORDER TO WIND UP.

Held, on appeal from and reversing the decision of Vice-Chancellor Knight Bruce, that a club is not within the operation of the Winding-up Acts (11 & 12 Vict. c. 45, and 12 & 13 Vict. c. 108), and an

order to wind up the same was therefore discharged without costs.

THIS was an appeal from Vice-Chancellor Knight Bruce making an order to wind up the above club.

*Bacon* and *Barton* in support; *Moline* and *Toulmin*, contra.

The Lord Chancellor said, the question was, whether clubs, in the ordinary acceptance of the word, were within the scope and intention of the 11 & 12 Vict. c. 45, and 12 & 13 Vict.



c. 108. It was necessary, after glancing at the nature and constitution of clubs in general, to examine whether these associations were comprehended within the provisions of those Acts. Clubs were founded on the principle that a person could not by a mere money payment become a member, but must be first elected, and pay an entrance-fee and an annual subscription, upon the payment of which he could only continue a member. It appeared that by one of the rules of the present association power was given to inquire into the conduct of any of its members, and upon being satisfied that they had been guilty of misconduct the members were empowered to expel such parties therefrom. No doubt, as long as a person continued a member he would certainly have an interest in the general assets of the club, and if it were broken up he might institute a suit for the administration of the assets, but there was, however, no such interest as he could sell or bequeath. All he possessed was a bare personal right of admission to the club and to all the benefits derivable therefrom. The first Act (7 & 8 Vict. c. 111), applied only to any company or body of persons associated together for any trading or commercial purposes, and the 11 & 12 Vict. c. 45, merely enlarged the provisions of the former Act, and was confined to trading and commercial companies. Then came the 12 & 13 Vict. c. 108, which by sect. 1 enacted, that, "notwithstanding anything in the said Act contained importing a more limited application thereof, the same shall apply to all partnerships, associations, and companies, whereof the partners or associates are not less than seven in number, whether incorporated or unincorporated, and whether formed or subsisting before or after the passing of the said Act or this Act, other than and except railway companies, incorporated by Act of Parliament, to which companies such Act shall not apply." Although clubs were undoubtedly associations within the natural meaning of the word, they could not be considered as associations in the sense the word was used in the Act. It was used in direct connexion with companies and partnerships and could only be construed as meaning associations *ejusdem generis*,—i. e., for the purpose of profit. And, moreover, if it had been intended to include clubs within the provisions of the Acts, they would have been specifically mentioned. The appeal would therefore be allowed and the order for winding up discharged.

July 28.—*In re Hewetson; Torbock v. Hewetson*—Order for lunatic trustees to convey trust estate.

— 28.—*In re Wilson*—Order for commission in lunacy.

— 28.—*In re Sharp*—Order on petition for payment of legacies out of fund in Court.

— 30.—*Lake v. Currie*—Appeal allowed from the Master of the Rolls.

— 31.—*Dean and Chapter of Ely v. Bliss*

and others—Appeal allowed from the Master of the Rolls.

July 31.—*In re Cobbett*—Order by consent for discharge of prisoner.

### Lords Justices.

*Walker v. Bentley.* July 3, 5, 1852.

SPECIFIC PERFORMANCE OF CONTRACT OF PURCHASE.—LANDS FREE FROM GREAT TITHES.—TITHE COMMUTATION ACT.

*Certain property was offered for sale and described to be free from great tithes, and it appeared that all the steps for commutating the tithes had been properly taken under the 6 & 7 Wm. 4, c. 71, and that the award of the Commissioners had not been controverted before the 1st January following the same: Held, dismissing with costs on appeal from Vice-Chancellor Turner, that as by the operation of section 67 the lands became absolutely free from great tithes, the plaintiff was entitled to a decree for the specific performance of the contract of the purchase thereof by the defendant.*

THIS was an appeal from the decision of Vice-Chancellor Turner overruling the exceptions taken to the Master's report upon a reference in this suit which was for specific performance of an agreement to purchase certain lands at Burton Lonsdale, Yorkshire, alleged therein to be free from great tithes. It appeared that at the parochial meeting called under section 17 of the Tithe Commutation Act (6 & 7 Wm. 4, c. 71), an agreement had been come to by which a rent-charge in lieu of tithes upon the lands in the parish was fixed, and the tithes on the land in question were described as merged. This was followed by an apportionment of the rent-charge among the different landowners under section 19, and the Tithe Commissioners confirmed the award in accordance with section 27. The Master reported that the land was free from great tithes, and that a good title was shown, and exceptions thereto were overruled by the Vice-Chancellor Turner and specific performance decreed, whereupon this appeal was presented.

*Elmsley* and *C. Hall* for the plaintiff and respondent; *J. Russell* and *C. C. Berkeley* for the defendant and appellant.

The Lords Justices, after referring to the proceedings necessary under the Tithe Commutation Act for commutating tithes, said, that as the steps had been properly taken and the award of the Commissioners had not been controverted before the 1st January following the same, the land became absolutely free from great tithes by the operation of section 67, and the appeal must be dismissed with costs.

July 28.—*Ex parte Sherlock, in re Sherlock*—Appeal from Mr. Commissioner Stevenson dismissed, and protection granted by consent of assignees.

— 28.—*Plowden v. Hyde*—Cur. ad. vult.

— 29.—*Smith v. Tuck*—Motion refused for discharge of prisoner on *habeas corpus*.

July 29.—*Esparte Sparrow, in re Fowke*—Stand over to Michaelmas Term.

— 29.—*In re Monmouthshire and Glamorganshire Banking Company, esparte Nicholas's Assignees*—On appeal from Mr. Commissioner Stephen, proof for call to be admitted.

— 30.—*Turner v. Evans*—Appeal dismissed from Vice-Chancellor Kindersley.

— 30.—*In re Richards*—Order as to costs,

— 31.—*Edwards v. Champion*—Stand over to Michaelmas Term.

— 31.—*Ricardo v. Troup*—Order by consent.

Aug. 2.—*Frisby v. Stafford; Davenport v. Charlesworth*—Appeal dismissed with costs.

— 2, 3.—*Bodenham v. Hoskins and others*—Stand over to Michaelmas Term.

— 3.—*Seymour v. Seymour*—Part heard.

— 3.—*Owen v. Bryant*—Judgment on special case for plaintiff.

### Master of the Rolls.

*Southern v. Wollaston.* July 26, 1852.

BEQUEST. — REMOTENESS. — THELLUSSON ACT.

Certain property was bequeathed to A. for life, and after his decease to such of his children as should attain the full age of 25 years, and in default of such child or children over to his heirs: Held, that the limitation over was void for remoteness under the 39 & 40 Geo. 3, c. 98, and that in default of such child the residuary legatee was entitled.

The testator by his will devised certain property to a person therein named for life, and after his decease to such of his children as should attain the full age of 25 years, and in default of such child or children, over to his heirs.

R. Palmer and Rogers for the plaintiff; Lloyd and Bilton, for the defendant and residuary legatee, contended that the limitation over was void under the 39 & 40 Geo. 3, c. 98.

The Master of the Rolls held, that the residuary legatee was entitled upon there being no such child or children.

July 28.—*Wotherspoon and others v. Peverell*—Injunction granted to restrain use of colourable imitation of plaintiff's labels.

— 23.—*Yeats v. Yeats*—Exception to Master's report allowed.

— 29.—*In re Monmouthshire and Glamorganshire Banking Company, esparte Copes's executor*—Appeal dismissed from the Master placing appellants' name on list of contributors.

— 29.—*Wotherspoon and others v. Milne*—Injunction granted.

— 29.—*Earl of Lindsay v. Great Northern Railway Company*—Motion to dissolve injunction dismissed, with costs.

— 29.—*Skortridge v. Bosanquet and another*—Stand over to Michaelmas Term.

— 29.—*Joddrell v. Joddrell*—Compromise come to.

July 30.—*Whicher v. Hume*—Order as to costs.

— 31.—*Young v. Buckley*—Reference to the Master in administration suit.

Aug. 2.—*Collett v. Preston*—Stand over.

— 2.—*Attorney-General v. Master of Brentwood Grammar School*—Order confirming arrangement come to.

— 2, 3.—*In re Clancy's Trusts*—Judgment on construction of will and as to costs.

— 3.—*Attorney-General v. Wiggeston Hospital*—Order for increased allowance to inmates, &c.

— 3.—*Maugin v. Maugin*—Judgment on fur. dirs.

### Vice-Chancellor Turner.

*Grieves v. Rawley.* July 10, 17, 1852.

WILL.—CONSTRUCTION.—“NEPHEWS AND NIECES.”—CHILD OF HALF BLOOD.

A testator directed his real and personal property to be distributed equally between his nephews and nieces: Held, overruling exceptions to the Master's report, that a child of a half sister was entitled to take equally with the nephews and nieces of the whole blood.

THE testator in this cause, by his will, directed as follows:—“I desire that all my property, real and personal, may be distributed equally between my nephews and nieces.” The Master had, upon a reference, included the daughter of a half sister, as entitled under the bequest, whereupon these exceptions were taken to his report.

Sir W. Page Wood and Southgate, in support; Heberden, contra.

*Cur. ad. vult.*

The Vice-Chancellor said, that the word applied to children of the half, as well as of the whole blood, and that the niece of the half blood was therefore entitled to take equally with nieces of the whole blood, and overruled the exception accordingly.

July 28.—*South Eastern Railway Company v. Munn and others*—Bill for specific performance dismissed.

— 28.—*Graham v. Grieves*—Judgment on construction of will.

— 30.—*O'Brien v. Osborn*—Reference back to the Master.

— 30.—*Williams v. Bond*—Injunction continued to restrain action at law.

July 31; Aug. 2.—*Attorney-General v. Bishop of Worcester*—Order for removal of name of relator introduced by mistake and for indemnity against his liability for costs.

Aug. 2.—*Morgan v. Milman*—Reference to the Master.

— 2.—*Milner v. Harrison*—Perpetual injunction.

July 29; Aug. 3.—*Attorney-General v. Sheffield Gas Consumers' Company; Sheffield United Gaslight Company v. Same*—Injunction refused, without costs.

## Vice-Chancellor Kindersley.

*In re Whittaker's Trust.* July 2, 1852.

## TRUSTEES' RELIEF ACT.—PAYMENT OUT OF COURT.—PETITION.

*On petitioning for payment out of Court of a fund, under the 10 & 11 Vict. c. 96, the affidavit made on paying in should form part of the petition.*

*Kenyon Parker and Humphrey appeared on this petition, which was presented for the payment out of Court of a fund paid in under the 10 & 11 Vict. c. 96.*

*The Vice-Chancellor said, that on all future occasions he should require that the affidavit made upon paying the money in, should form part of the petition for the payment out of the fund.*<sup>1</sup>

July 28.—*Attorney-General v. Governors of Crediton Church*—Judgment on exceptions to Master's report.

— 29.—*Potts v. Levy*—Injunction refused, with costs.

— 30.—*Jerry v. Beevor*—Master's report confirmed.

— 31.—*In re Tookey's Trustees; In re Bucks' Railway Company*—Order excepting the costs to be paid by railway company which were occasioned by litigation between adverse claimants.

Aug. 3.—*Duke of Buccleuch v. Kendal; Same v. Tyson*—Injunction granted.

— 3.—*In re Lambeth Charities*—Order confirming Master's report for charity scheme.

## Vice-Chancellor Parker.

*In re Tinkler's Trust Estate.* July 10, 1852.

## ANNUITY CHARGED ON LAND WITH POWERS OF DISTRESS AND ENTRY.—PAYMENT OF ARREARS OUT OF PROCEEDS OF SALE.

*Where an estate was sold to a railway company for the purposes of their railway, which had been charged by a testator with the payment of an annuity to his wife, with powers of distress and entry for its recovery: Held, that the arrears were payable out of the proceeds of sale.*

*The testator, Mr. Tinkler, by his will, gave his wife an annuity of 100*l.*, and charged the same on his real estate, with powers of distress and entry; and it appeared that a portion of such estate had been sold to the Great Northern Railway Company, for the purposes of their railway, and the money paid into Court, under the Lands' Clauses' Consolidation Act (8 Vict. c. 18). The annuity being in arrear, the trustees presented this petition for payment of the purchase-money to them, to be applied according to the trusts of the will, or for its invest-*

*ment and payment of the dividends on the same trusts.*

*A. J. Lewis in support; Simpson for the widow, claimed payment of the arrears out of the purchase-money; W. H. Clarke for the residuary legatees.*

*The Vice-Chancellor said, that although the Court would not direct an estate to be sold, yet, as it had been sold, the arrears of the annuity must be first paid out of the proceeds, as the effect of the powers of distress and entry was to charge the annuity on the corpus of the estate.*

July 28.—*Langhorne v. Langhorne*—Vesting order under 13 & 14 Vict. c. 60.

— 29.—*Macintosh v. Great Western Railway Company*—Stand over.

— 29.—*Simmons v. Lilleystone*—Injunction continued on terms.

— 30.—*Clay v. Rufford*—Bill dismissed, without costs.

Aug. 2.—*Percival v. Caney*—Order for payment out of Court of fund to plaintiff.

— 2, 3.—*Morgan v. Holford*—*Cur. ad. vult.*

— 3.—*Ex parte Perpetual Curate of Scrop-ton, in re North Staffordshire Railway Company's Act, 1847*—Petition refused for expending proceeds of sale of land in building parsonage house.

## Court of Queen's Bench.

*Timmins and wife v. Gibbons.* Jan. 3, 1852.

## BANK.—DEPOSIT OF NOTES—PROVING WORTHLESS.—LACHES.

*Notes of a country bank were paid into the defendant's bank by the plaintiff's wife on the terms of receiving 3 per cent. interest and for its repayment on 14 days' notice, and they were immediately sent up to London and presented for payment, and upon being dishonoured in consequence of the stoppage of the bank the day after such payment to the defendant, notice thereof was given to the plaintiffs: Held, discharging a rule nisi to set aside the verdict for the defendant and to enter it for the plaintiffs in an action to recover the amount of the notes, that as the defendant was guilty of no laches the loss must fall on the plaintiffs.*

*This was a rule nisi granted on April 19 last, to set aside the verdict for the defendant and to enter it for the plaintiffs in this action, which was brought against the officer of the Birmingham Banking Company to recover the amount of certain notes of the Stourbridge Banking Company which had been paid in by the plaintiff's wife: It appeared that she was to receive interest thereon at 3 per cent. and to give 14 days' notice of its removal, but that on the notes being immediately sent up to London they were returned as worthless,—the Stourbridge Banking Company having stopped payment the day after the plaintiff's wife had paid them into the defendant's bank. On the trial before Wrightman, J.,*

<sup>1</sup> And see *In re Levett's Trust*, ante, p. 183, in which Vice-Chancellor Parker has made a similar direction.

at the last Staffordshire Assizes, the defendant obtained a verdict.

Alexander, Q. C., and Chance showed cause against the rule which had thereupon been obtained; Keating, Q. C., and Gray in support, on the ground that the notes were received as cash, and there was no warranty of the solvency of the maker of the notes.

The Court said the transaction could not be resolved in a sale of the instrument to render applicable the maxim of *caveat emptor*, but the notes were simply deposited on the terms of the repayment of their amount in 14 days, and they were received as of value and in the belief that the bank was solvent. As, therefore, no losses could be attributed to the defendant, who had immediately sent the notes up to London, and had then presented for payment and given the plaintiffs notice of dishonour, the plaintiffs must bear the loss, and the rule would be discharged.

### Court of Common Pleas.

*Belshaw v. Bush.* Jan. 19; June 22, 1852.

**ACTION FOR GOODS SOLD AND DELIVERED.—PLEA OF ACCEPTANCE OF BILL BY THIRD PERSON FOR AND ON ACCOUNT OF DEBT.—REPLICATION.—DEMURRER.**

The defendant pleaded to an action for goods sold and delivered as to 33l. 10s., part of the demand, that the plaintiff drew a bill of exchange for that amount on the defendant's father who accepted and delivered the same to the plaintiff for and on account of the sum of 33l. 10s., part of the debt in the declaration mentioned, and of the causes of action in respect thereof: Held, on demurrer to the replication that the bill was dishonoured before action brought, that the bill, although given by a stranger, operated as an extinguishment of the debt, and must be deemed to be a conditional payment on behalf of the defendant adopted by the plaintiff, and that the plea was therefore an answer to the action.

THIS was a demurrer to the replication in this action which was brought for goods sold and delivered. The defendant pleaded as to 33l. 10s., part of the demand, that the plaintiff drew a bill of exchange for that amount on the defendant's father who accepted and delivered the same to the plaintiff for and on account of the sum of 33l. 10s., parcel of the debt in the declaration mentioned, and of the causes of action in respect thereof. To this the plaintiff replied the dishonour of the bill before action brought. The case now came on upon demurrer to this replication.

*Quinn* for the plaintiff; *Bovill* for the defendant.

*Cur. ad. vult.*

The Court said, that as, if the defendant had given the bill, it would operate as payment, there was no reason why it should not operate as an extinguishment of the debt, although given by a stranger for and on account of the

debt due from the defendant, citing *Griffiths v. Owen*, 13 M. & W. 58; and that the bill given by the defendant's father must be considered to be conditional payment on behalf of the defendant adopted by the plaintiff, and that the plea was therefore a good answer to the action, and the defendant was entitled to judgment.

### Court of Exchequer.

*Butler v. Aldon.* June 11, 1852.

**ADMINISTRATOR—BURYING INTESTATE.—CONTRACT BETWEEN DECEASED AND UNDERTAKER.—QUESTION FOR JURY.**

In an action brought by an undertaker against the defendant, who was nephew to the deceased, for his burial, it appeared that the great-nephew had ordered the funeral, but that the defendant had administered as next of kin, and he pleaded never indebted. It was shown on the trial that the deceased had agreed in his lifetime that the plaintiff should perform the funeral, which was to be like his brother's, and that he had set aside a sum of 50l. for the purpose in a drawer, to be paid to the plaintiff on the day of the funeral: Held, making absolute a rule for a new trial, that it should have been left to the jury to say, whether this amounted to a contract or a mere intimation of a wish with respect to the funeral.

THIS was a rule nisi granted April 24 last, on leave reserved to set aside the nonsuit and enter the verdict for the plaintiff, or for a new trial in this action, which was brought by an undertaker to recover the amount of his bill for burying the defendant's uncle. It appeared that the deceased was buried by the direction of his grand-nephew, then residing with him, but that the day following the funeral the defendant, who was his nephew, put in his claim on learning his uncle died intestate, and obtained letters of administration. The defendant pleaded never indebted. It appeared on the trial before Mr. Baron Platt, that the deceased had arranged that the plaintiff should perform the funeral, which was to be like his brother's, and stated he had left 50l. for the purpose in a drawer, to be paid to him on the day of the funeral. It also appeared that upon the plaintiff applying to the defendant for payment he had said that though it was a hard thing to make him pay, yet the plaintiff should be paid as he would get some of the property.

*Phias* and *Willes* showed cause against the rule on the ground that the defendant should have been sued in his representative and not personal character.

The Court said, that as it had not been left to the jury to say whether what passed between the deceased and the plaintiff amounted to an express contract to be performed after his death, or a mere intimation of his wishes with respect to his funeral, the rule would be made absolute for a new trial.

## ANALYTICAL DIGEST OF CASES,

REPORTED IN ALL THE COURTS.

## Courts of Equity.

[For the previous Sections of the Digest in this Volume, see

*Privy Council*: Appeals, p. 17.

*House of Lords*: Appeals, p. 38.

*Courts of Equity*:

Construction of Statutes, p. 104.

Law of Attorneys and Solicitors, p. 125.

Contributories under the Winding-up Act, p. 143.

Law of Trustees, p. 165.

Lunacy, p. 185.

Law relating to Infants, p. 186.

Law relating to Charities, p. 203.

Appeals in Bankruptcy, p. 225.]

## CONSTRUCTION OF STATUTES.

## ANNUITY.

1. *Statute of Limitations*.—Land charged with an annuity is only liable for six years' arrears, under the 3 & 4 Wm. 4, c. 27, although the grantor may be liable on covenant for 20 years' arrears, under the 3 & 4 Wm. 4, c. 42. *Hunter v. Nockolds*, 1 H. & T. 644; 1 M'N. & G. 640.

Cases cited in the judgment: *Paget v. Foley*, 2 Bing. N. C. 690; *Strachan v. Thomas*, 12 A. & E. 558; *Harrison v. Duiguan*, 2 D. & W. 298; *Hughes v. Kelly*, 3 D. & W. 482.

2. *Memorial*.—*Consideration*.—*Incumbrance*.—*Stat. 53 G. 3, c. 141*.—It is sufficient that the memorial of an annuity, enrolled pursuant to the Act 53 Geo. 3, c. 141, should, under the head "Consideration, and how paid," state the amount of the consideration, and whether paid in money, notes, or bills, as the case may be; without stating to whom the same was paid, or the fact that part of such consideration was paid to a third person in redemption of a prior incumbrance on the property. *Moody v. Hebard*, 7 Hare, 182.

## APPORTIONMENT OF RENTS.

1. A testator died in 1838, having by his will, given real estates to trustees, in trust, after keeping up his mansion, &c., to pay five-eighths of the net rents to his widow for life. The widow died in 1847, and rents were receivable on the next rent day, under leases created by the testator anterior to the Apportionment Act: *Held*, that the rents were apportionable. *Knight v. Boughton*, 12 Beav. 312.

2. "*Instrument*" creating life interest.—The "*instrument*" referred to in the Apportionment Act (4 & 5 W. 4, c. 22), is not the instrument creating the periodical payments, but that creating a life interest therein. *Knight v. Boughton*, 12 Beav. 312.

3. *Dividends on East India Company's loan*.—The half-yearly interest on a share of a loan to the East India Company, redeemable after a certain period, at the option of the company, but not at that of the creditor, *held* to be in

the nature of an annuity, and not of interest, and therefore not to be apportionable between tenant for life and remainder-man, in a case not falling within the Apportionment Act, although the stock certificate described the loan as a debt, and although, under the condition for redemption, the last payment might have to be an apportioned part of the half-yearly interest. *Warden v. Ashburner*, 2 De G. & S. 366.

## BANKING COMPANY.

*Not incorporated*.—*Stat. 1 & 2 Vict. c. 110, s. 14*.—A banking copartnership which made returns to the Stamp Office pursuant to 7 Geo. 4, c. 46, *held* to be a public company not incorporated within the meaning of 1 & 2 Vict. c. 110, s. 14. *Macintyre v. Connell*, 1 Sim., N. S., 225.

## BENEFICE.

*Debtor and creditor*.—*Judgment debt*.—1 & 2 Vict. c. 110, s. 13.—*Receiver*.—A judgment, entered up in 1845, against a beneficed clergyman for a debt, was duly registered: *Held*, that, under the 1 & 2 Vict. c. 110, s. 13, it was a charge upon his benefice, and that the creditor was entitled to have a receiver of the profits of the benefice appointed. *Hawkins v. Gathercole*, 1 Sim., N. S., 63.

## BENEFIT BUILDING SOCIETY.

1. *Joint-stock company*.—A joint-stock company cannot hold shares in a benefit building society established under the 6 & 7 Will. 4, c. 32, for regulating benefit societies. *Dobinson v. Hawks*, 16 Sim. 407.

2. *Contracts between members*.—*Usury*.—*Non-registration*.—A member of a building society, which had been duly registered and certified, pursuant to the Friendly Societies' Acts, obtained an advance from the society of 500*l.* on security, including that of a leasehold house; in consideration of which advance periodical payments, extending over about eight years, were agreed to be made by him, amounting to 99*8l.* 16*s.* By the rules of the society he was entitled to participate in a dividend fund. On the death of the member, his executrix, in a suit against the trustees of the society alone, sought to have the securities set aside as usurious, or that relief should be given, on the ground that the society was not a friendly society, but a joint-stock company, within the Joint-Stock Companies' Registration Act; and that as it was not registered pursuant to that Act, the contract with it was invalid: *Held*, 1st, that the contract was not usurious, it being for an advance out of funds of all to one of the members; 2ndly, that though the objection of non-registration might deserve attention, it did not arise on these pleadings, so that the Court could properly express an opinion upon it; and that, if the association was illegal, and the plaintiff had a right to have the contract rescinded on that ground, every other member would have a similar right, and that the plaintiff was bound so

to frame her suit as to enable the Court to wind up the society consistently with the interests of all the members; and that, as this was not within the scope of the suit, the bill must be dismissed, with costs. *Burbidge v. Cotton*, 5 De G. & S. 17.

Cases cited in the judgment: *Silver v. Barnes*, 6 Bing. N. C. 180; *Cutbill v. Kingdon*, 1 Exch. R. 494, 504.

#### CHURCH BUILDING ACTS.

*Mode of apportioning charities between the districts of a divided parish.*—Under the 8 & 9 Vict. c. 70, empowering the Court of Chancery, where the Commissioners for Building Churches have divided a parish into districts, to apportion charitable gifts made for the use of the parish: *Held*, that the Court is bound to act if called on, although no complaint is made of the mode in which the distribution of the gifts has been made since the division into districts.

*Held*, also, that, under the above Act, and the 52 Geo. 3, c. 101, or one of them, the Court has jurisdiction to apportion gifts made specifically to a particular division of a parish, part of which has been formed into a chapelry district.

By consent, the Court, instead of directing a reference, allowed a petition for apportionment to stand over, for the parties to propose a scheme.

Two schemes being thereupon proposed, one of apportionment according to the gross population of the districts, the other according to the population, including only occupiers of houses of the annual value of 15*l.* and under, the Court adopted the apportionment according to the gross population. *In re West Ham Charities*, 2 De G. & S. 218.

#### COMMISSIONERS OF WOODS AND FORESTS.

*Right to sue and to be sued under 7 G. 4, c. 77.*—The Commissioners of Woods and Forests are not, under the 7 G. 4, c. 77, entitled to sue or liable to be sued for the specific performance of contracts entered into with and by them.

The Commissioners were authorised, with the consent of the Lords of the Treasury, to demise, or previous to any demise, to contract to demise. The bill alleged that the Commissioners having first obtained the consent required, determined to demise, and afterwards contracted to demise to the plaintiff, and prayed a specific performance: *Held*, on demurrer, that the bill could not be sustained. *Nurse v. Lord Seymour*, 13 Beav. 254.

And see *Metropolitan Improvement Act*, 1.

#### DEBTS PAYABLE OUT OF REAL ESTATE.

1. *W. 4, c. 47, is prospective, and since 3 & 4 W. 4, c. 104, extends to copyholds.*—The Act 1 W. 4, c. 47, enabling a tenant for life under a will to sell lands for payment of the debts of any testator whose estate "by law shall be liable to the payment of any of his debts," is prospective, and now extends to copyholds, although they were not liable to the payment of debts when the Act passed. *Branch v. Browne*, 2 De G. & S. 299.

2. *Stat. 3 & 4 W. 4, c. 104.—Jurisdiction.*—The Court has jurisdiction to order the real estates of a deceased debtor to be sold for payment of his debts, in a suit instituted, not by a creditor of the deceased, but by a person interested in his estates under his will. *Rodney v. Rodney*, 16 Sim. 307.

Case cited: *Price v. Price*, 15 Sim. 484.

#### EVIDENCE ACT.

1. *13 & 14 Vict. c. 35, s. 28.—Affidavits at hearing.*—Appointment.—Affidavits admitted at the hearing, under the Stat. 13 & 14 Vict. c. 35, s. 28, as evidence that no appointment of trust funds had been made by deceased persons, in support of a suit by a party claiming in default of appointment. *Devey v. Thornton*, 9 Hare, 233.

2. *14 & 15 Vict. c. 99, s. 10.—Documents admissible in evidence in Ireland.*—Verification of official character.—An affidavit, purporting to be sworn before a Master Extraordinary of the Court of Chancery in Ireland, is, under the Stat. 14 & 15 Vict. c. 99, s. 10, admissible in evidence in a matter before this Court, without proof of the signature or official character of the person before whom it is stated to have been sworn. *In re Mahon's Trust*, 9 Hare, 459.

3. *Order for leave to examine a party saving just exceptions.*—Stat. 14 & 15 Vict. c. 99.—The Stat. 14 & 15 Vict. c. 99, enabling parties to a cause to be examined as witnesses, renders unnecessary the common order under the old practice, giving liberty to a party to examine another party, saving just exceptions. *Swann v. Wortley*, 9 Hare, 460.

4. *Examination de bene esse.*—Commission out of the jurisdiction for the examination of a party in the cause.—On the application for a commission for the examination *de bene esse* of a witness above 70 years of age (such witness being the plaintiff in the cause and a defendant in a cross cause, whose time for answering had expired, and whose answer had not been put in, and being also the party who applied for the commission for the purpose of being examined in support of his own case, under the Stat. 14 & 15 Vict. c. 99), the Court refused to impose it as a condition in making the order that the answer should be filed. *Forbes v. Forbes*, 9 Hare, 461.

#### FRAUDS, STATUTE OF.

A defendant by his answer alleged, that no formal note of the agreement charged by the bill was made, and denied that any binding agreement ever existed; but he did not expressly claim the benefit of the Statute of Frauds: *Held*, at the hearing, that he was not entitled to any benefit of the statute. *Skinnet v. McDouall*, 2 De G. & S. 265.

#### JOINT-STOCK COMPANIES' REGISTRATION.

*Contract by directors with a director.*—The 29th section of the Joint-Stock Companies' Registration Act, 1849, requiring any contract or dealing between a company and any director (except as therein-mentioned) to be sub-

mitted to a meeting of shareholders, extends to a loan of money from a director to the company. *Teverham v. Cameron's Coalbrook Steam Coal and Swansea and Lougher Railway Company*, 3 De G. & S. 296.

## JUDGMENT CREDITOR.

1. *Rights over Accountant-General's cheque payable to debtor.*—1 & 2 Vict. c. 110.—Construction of 12th section.—A judgment creditor, on ascertaining that a sum of money was about to be paid in a cause to his debtor, applied by petition to the Court that the sheriff might be at liberty to seize in the Accountant-General's Office, a cheque by means of which the sum of money was to be paid out to the debtor: *Held*, that under the 12th section of the 1 & 2 Vict. c. 110, the cheque was liable to seizure, and that inasmuch as the cheque was in the hands of the Accountant-General, the application to the Court was proper. *Watts v. Jefferyes*, 3 M'N. & G. 422.

2. *Possession under elegit.*—Accounting for rents, &c.—In a suit by a judgment creditor, who had been in possession under an *elegit*, to have the real estates of the debtor sold, under 1 & 2 Vict. c. 110, the plaintiff must account in the same manner as a mortgagee in possession. *Bull v. Faulkner*, 2 De G. & S. 685.

## LOCAL ACT.

1. *Application of funds unauthorised by.*—Injunction.—By a local act of Parliament, Commissioners were appointed to construct such reservoirs and other works, as might be necessary for supplying a town with water, and to do all things necessary for that purpose, and they were authorised to levy rates for the purposes of that act. The supply of water was found insufficient, and the commissioners were desirous of bringing water from other places, so as effectually to carry out the objects of the act: *Held*, that they were not authorised in applying any of the moneys received from such rates in payment of the expenses of making application to Parliament for another act to extend their powers: and an injunction was granted to restrain them from so doing. *Attorney-General v. Andrews*, 2 H. & T. 431.

2. *Application of rates to obtain Act of Parliament.*—Commissioners under a local act of Parliament, the object of which was to supply the town of S. with water, were empowered to raise funds by assessment, to be applied in certain specified ways, having immediate reference to the purposes of the Act, and in otherwise carrying the Act into execution: *Held*, that although the Commissioners might have properly applied the funds raised in resisting a proceeding in Parliament, prejudicial to the object of the act; yet they were not justified in applying them to defray the expense of obtaining another act of Parliament giving more extensive powers for carrying out the object of the existing act. *Attorney-General v. Andrews*, 2 M'N. & G. 225.

Case cited in the judgment: *Bright v. North*, 2 Phill. 216.

## METROPOLITAN IMPROVEMENT ACT.

1. *Costs.*—"Expenses of purchases."—Making out title.—The costs incurred by a tenant for life, in making out the title to property taken by the Commissioners of Woods, &c., under the Metropolitan Improvement Acts, are not, upon the construction of section 49, of the Act 3 & 4 Vict. c. 87, within the description of "expenses of the purchases," payable by the Commissioners. *In re Strachan's Estate*, 9 Hare, 185.

Cases cited in the judgment: *Mitchell v. Newell*, 3 Rail. C. 515; *Ex parte Cooke*, id. 135; *Ex parte Molyneux*, 2 Coll. 273.

2. *Costs.*—Tenant for life and remainderman.—Apportionment.—The Court has no jurisdiction under the Metropolitan Improvement Acts, to apportion the costs of a tenant for life in making out his title to property taken under those Acts between such tenant for life and the parties entitled in remainder, or to order payment of such costs out of the corpus of the purchase-money which is paid into Court owing to the disability or incapacity of the parties entitled. *In re Strachan's Estate*, 9 Hare, 185.

## MIDDLESEX REGISTRATION ACT.

*Validity of registered settlement, as against prior unregistered conveyance.*—Notice.—A conveyance of land in Middlesex by settlement, upon the marriage of the settlor, registered under the statute 7 Ann. c. 20, is effectual against a prior unregistered conveyance, notwithstanding the party claiming under the settlement, had no notice of the unregistered conveyance after the marriage, but before the registry of his settlement. *Elsey v. Iutleys*, 8 Hare, 159.

## MUNICIPAL CORPORATIONS' ACT.

*Borough fund.*—The corporation of Norwich restrained from soliciting, at the expense of the borough fund, a Bill in Parliament to enable them to improve the navigation of the river which flows through that city, to Yarmouth. *Attorney-General v. Corporation of Norwich*, 16 Sim. 225.

## PATENT.

*Sci. fu. to repeal.*—Disclaimer under 5 & 6 Wm. 4. c. 83.—Pending a proceeding in *sci. fu.* to repeal a patent, the patentee disclaimed a part, under the 5 & 6 Wm. 4. c. 83. The prosecutor still proceeded, and ultimately failed: *Held*, that he ought to pay the costs subsequent to the disclaimer. *Queen v. Mill*, 14 Bear. 312.

## POLICY OF LIFE INSURANCE.

14 Geo. 3, c. 48.—Public policy.—The statute 14 Geo. 3, c. 48, does not prohibit a policy of insurance from being granted to one person in trust for another, where the names of both persons appear upon the face of the instrument; nor does the effecting of such an insurance in any way contravene the policy of the statute. *Collett v. Morrison*, 9 Hare, 162.

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## ARRANGEMENTS BY DEED UNDER THE BANKRUPT ACT.

### RECENT DECISION.

In a former Number (vol. 43, p. 267), attention was called to a remarkable conflict of opinion between two of the Courts of Law, upon the construction of that division of the Bankrupt Law Consolidation Act, which relates to "Arrangements by Deed," and a hope expressed that some party interested would take an early opportunity of bringing the question before a Court of Appeal with a view to its final settlement.

Many of our readers will recollect, that in a case of *Drew and others v. Collins*,<sup>1</sup> argued in Trinity Term, 1851, the Court of Exchequer decided, that a deed of arrangement between an insolvent trader and his creditors is not under the 224th section of the Act 12 & 13 Vict. c. 106, obligatory on the creditors who have not executed it, unless it provides for the distribution of the entire estate of the trader amongst his creditors. In other words, it was held that a composition deed was not within the meaning of the arrangement clauses of the Bankrupt Law Consolidation Act, and that these clauses were only operative when the whole assets of the insolvent trader were to be divided as in bankruptcy. In a still later case of *Tetley and others v. Taylor*,<sup>2</sup> where six-sevenths of an insolvent trader's creditors executed a deed under which they were to receive a composition of 7s. 6d. in the pound, and give the trader a release for the full amount of their debts, the Court of Queen's Bench, though strongly pressed with the authority of *Drew and others v.*

*Collins*, expressly held, that the deed was obligatory upon a creditor who had not executed it, and that it was a deed within the meaning and operation of the Bankrupt Law Consolidation Act, section 224.

*Tetley and others v. Taylor* was subsequently taken by a writ of error to the Exchequer Chamber, and argued at the Sittings after Trinity Term last, before the Chief and other Judges of the Common Pleas and the Barons of the Exchequer, including Baron Parke, who was not present in the Court of Exchequer when *Drew v. Collins* was decided. The Judges composing the Court of Error were unanimously of opinion that *Drew v. Collins* was rightly decided, and that no deed of arrangement is valid under the Bankrupt Act, which does not provide for the distribution of the trader's whole estate amongst his creditors as well as for the trader's release from his liabilities. It was admitted, that the language of section 224 was not altogether free from doubt, but that it would require strong words to take away the right of a creditor to the distribution of his debtor's estate, or to justify the conclusion, that the Legislature intended that six-sevenths of a trader's creditors should have the power of binding the others to an arrangement which did not secure the distribution of the debtor's estate. Upon these considerations, the judgment of the Court of Queen's Bench in *Tetley and others v. Taylor* was reversed.

In the present state of the law, as explained by this decision, it will be vain to endeavour to carry out any arrangement in the nature of a composition with creditors, however beneficial, without previously securing the concurrence of every individual creditor. The knowledge that such is the law, is not unlikely to induce a certain class of creditors to hold out for full payment,

<sup>1</sup> Reported 6 Exch. 670. Considered 42 Leg. Obs. p. 172.

<sup>2</sup> Reported 21 Law Jour. p. 2. Q. B. VOL. XLIV. No. 1,275.



even when a composition is offered considerably beyond what could be divided under an immediate sale and distribution of the debtor's effects. The practical result, no doubt, will be, to force many estates into bankruptcy, when, under a different state of the law, bankruptcy might be advantageously avoided. In this state of things, it is more than ever desirable that the Bankrupt Laws should be simplified and amended, and the expenses attendant upon a petition for adjudication of bankruptcy materially reduced.

## NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

### ENFRANCHISEMENT OF COPYHOLDS.

15 & 16 VICT. c. 51.

Reciting 4 & 5 Vict. c. 35; 6 & 7 Vict. c. 23; 7 & 8 Vict. c. 55.

For effecting enfranchisement after next admittance after 1st July, 1853; s. 1.

Mode of effecting enfranchisements; s. 2.

Appointment of valuer not to be revoked without mutual consent, except that Commissioners may remove for misconduct; s. 3.

In case of death, &c., of valuers, others to be appointed; s. 4.

Commissioners, &c., may call for and enforce production of books and documents; s. 5.

Power of entry for purposes of Act; s. 6.

Valuers how to proceed; s. 7.

Questions of law or fact may be referred to the Commissioners. Appeal to be had on matter of law on a case stated. 4 & 5 Vict. c. 35, s. 40;—s. 8.

Award to be confirmed by the Commissioners; s. 9.

Charge under Act to be a first charge; s. 10.

Enfranchisements to be according to form in schedule; s. 11.

Form of charge; s. 12.

Certificates to be transferable by endorsement; s. 13.

Stamp on certificates; s. 14.

Commissioners may correct any error in award, &c., after notice to parties interested; s. 15.

Valuer to take particular circumstances of the cases into consideration; s. 16.

If consideration not paid, the lord may take possession; s. 17.

Land so obtained by lord may be let for not exceeding seven years; s. 18.

Steward's compensation to include preparation of deed of enfranchisement; s. 19.

Inspection, &c., of Court Rolls of the manor; s. 20.

After enfranchisement, the lord may give up to the Commissioners all the Court Rolls. Inspection, &c., thereof; s. 21.

Title of lord to be made for the purpose of enfranchisement; s. 22.

After an application for enfranchisement, tenant may require Commissioners to inquire into the lord's title; s. 23.

Identity of lands; s. 24.

As to purchase by the lord in certain cases; s. 25.

Power to lord having a limited interest to charge purchase money on manor, &c.; s. 26.

After 1st July, 1853, when a heriot shall be due and payable, the lord or tenant may require or compel enfranchisement; s. 27.

Declaration to be taken by valuers; s. 28. As to recovery of interest in enfranchisement considerations; s. 29.

As to expense of proceedings under this Act; s. 30.

How expenses of enfranchisement to be borne where the lord has but a limited interest in a manor, or is trustee thereof; s. 31.

How tenants' expenses of enfranchisement are to be borne; s. 32.

Confirmation of award by Commissioners to be proof of prior proceedings being regular; s. 33.

After confirmation of apportionment, &c., in cases of enfranchisement, the customary modes of descent to cease, and the lands to descend and to be subject to dower and curtesy in like manner as freehold lands. Proviso. Proviso as to gavelkind; s. 34.

Commissioners to have power to suspend proceedings; s. 35.

Power to lord to sell rent-charge; s. 36.

Commissioners to certify the amount of consideration-money for redemption; s. 37.

Consideration-money for redemption of sale, how payable; s. 38.

Consideration-money in cases of owners under disability, how payable; s. 39.

As to consideration-money under 20*l.*; s. 40.

Power to commute or enfranchise at fixed fines or rent-charges; s. 41.

Tenants may deduct rent-charges, &c., payable to landlord; s. 42.

Surrenderer by way of mortgage, &c., to be deemed a tenant for certain purposes; s. 43.

Enfranchisement not to affect previous leases or demises; s. 44.

Not to affect commonable rights in respect of lands enfranchised; s. 45.

Enfranchisement not to affect rights under any will, settlement, &c. ; s. 46.

Defective titles of lords and tenants ; s. 47.

Act not to extend to mines or minerals, &c., nor to copyholds for lives where tenants have not a right of renewal ; s. 48.

Copies registered at the office of Commissioners to be evidence ; s. 49.

Agreements, &c., to be exempt from stamp duty ; s. 50.

Penalty on persons obstructing Commissioner, assistant Commissioner, valuer, or umpire ; s. 51.

Construction of words ; s. 52.

This Act to be deemed part of first-recited Act ; s. 53.

Titles of Acts ; s. 54.

Not to impede enfranchisement irrespective of this Act, or powers in other Acts of Parliament ; s. 55.

The following are the sections of the Act:—

An Act to extend the Provisions of the Acts for the Commutation of Manorial Rights, and for the gradual Enfranchisement of Lands of Copyhold and Customary Tenure. [30th June, 1852.]

Whereas an Act was passed in the Session of Parliament holden in the 4 & 5 Vict., intitled "An Act for the Commutation of certain Manorial Rights in respect of Lands of Copyhold and Customary Tenure, and in respect of other Lands subject to such Rights, and for facilitating the Enfranchisement of such Lands, and for the Improvement of such Tenure:" And whereas the said Act was amended and explained by an Act passed in the Session of Parliament holden in the 6 & 7 Vict., and by an Act passed in the Session of Parliament holden in the 7 & 8 Vict.: And whereas it is expedient to extend the provisions of the said Acts in manner hereinafter provided: May it therefore please your Majesty that it may be enacted; and be it enacted as follows:—

1. At any time after the next admittance to any lands which shall take place on or after the 1st day of July, 1853, in consequence of any surrender, bargain and sale, or assurance thereof (except upon or under a mortgage in cases where the mortgagee is not in possession), or in consequence of any descent, gift, or devise, and whether such surrender, bargain and sale, or assurance shall have been made, passed, or executed, or such descent shall happen, or such gift or devise shall take effect before or after that day, it shall be lawful for the tenant so admitted or for the lord to require and compel enfranchisement in manner hereinafter mentioned of the lands to which there shall have been such admittance as aforesaid; provided that no such tenant shall be

entitled to require such enfranchisement until after payment or tender of the fine or fines and of the fees consequent on such admittance: Provided also, that if from any cause such enfranchisement shall not take place until some event shall have happened which may require a second or any subsequent admittance, such second or subsequent admittance shall be made, with all the rights incident thereto, as if this Act had not passed, and it shall be competent for the lord or tenant to require and compel enfranchisement upon or after such second or subsequent admittance in the manner hereby provided for enfranchisement upon the next admittance.

2. In every case where under the powers of this Act any lord or tenant shall become entitled to require and shall require the enfranchisement of any copyhold lands, he shall give notice in writing, the lord to the tenant, or the tenant to the lord, as the case may be, of his desire that such lands should be enfranchised, and the consideration to be paid to the lord for such enfranchisement shall, unless the parties agree about the same, be ascertained under the direction of the Copyhold Commissioners, upon application to them in writing in the manner following, viz., by two valuers, one to be appointed by the lord, and the other by the tenant; and such two valuers before they proceed shall appoint an umpire to whom any points in dispute between them shall be referred; and in case the valuers or umpire, as the case may be, shall not make their or his decision, and deliver the particulars thereof in writing to the lord and tenant, or the solicitor or agent of such lord and tenant, within 42 days after the appointment of such valuers, or after the matter shall have been referred to such umpire, as the case may be, then the Commissioners shall act as umpire in fixing the consideration to be paid or rendered to the lord; and in any case where either party shall neglect or refuse for 28 days after being called on so to do to appoint his valuer, the Commissioners shall appoint a valuer for him as soon as may be after the expiration of such 28 days; and in any case where any valuers appointed under this Act, either originally or in the place of any other valuer, shall for the space of one week after their appointment be unable to agree in the appointment of such umpire, the Commissioners shall appoint such umpire; and such umpire shall give in his award in manner and within the time aforesaid, and if he shall neglect or refuse or on any account fail so to do, the Commissioners shall act as such umpire as aforesaid: Provided always, that it shall be lawful for the lord and tenant to appoint one and the same person as valuer, and in such case the valuations, acts, and award of such single valuer shall have the same effect as the valuations, acts and award of the valuers or umpire under the provisions herein contained: Provided also, that it shall be lawful for the said Commissioners, on application to them in writing by such lord or tenant, or such umpire as aforesaid, if the said Commis-

sioners shall see fit, to extend the time within which a valuer may be appointed, or any decision or award under this Act may be given.

3. The appointment of a valuer by the lord or by the tenant shall not be afterwards revoked, except by the mutual consent of the lord and tenant; provided always, that it shall be lawful for the Commissioners at any time, on complaint of either party, to remove any valuer or umpire for misconduct, or for refusal or omission to act.

4. Upon the death, incapacity, or refusal to act, or removal, from time to time, of any valuer, another valuer shall, by a time to be fixed for such purpose by the Commissioners, in the manner and by the means aforesaid, be appointed in his stead; and in case such death, incapacity, or refusal to act, or removal, shall be of a valuer who may have been chosen by the lord and tenant, then the lord and the tenant may in manner hereinbefore directed or authorised as regards them respectively substitute one other person as valuer, or the lord may nominate one valuer on his behalf, and the tenant another on his behalf; and in any such case where either party shall neglect or refuse for 28 days after being called on so to do to appoint his valuer, the Commissioners shall appoint a valuer for him as soon as may be after the expiration of such 28 days; and after every or any substitution the new valuer or valuers for the time being may adopt and act upon any valuations and other matters or proceedings which shall have been completed or agreed upon by the valuer or valuers previously acting.

5. The Commissioners, assistant Commissioners, and valuers may, by summons under the seal of the Commissioners, call for the production for any of the purposes of this Act, at such time and place as the Commissioners shall appoint, of any Court Rolls or copies of Court Roll in the possession or power of any lord or tenant, or of the steward of any manor, and may by summons under such seal summon and examine any lord or tenant, or other person on oath, and administer the oath necessary for that purpose; and every person who shall have been summoned, and to whom a reasonable sum shall have been paid or tendered for his expenses, and who shall without lawful excuse neglect or refuse to attend or to produce any such documents so called for as aforesaid, shall, being convicted thereof before any two justices of the peace for the county wherein such proceedings were held, forfeit the sum of 5*l.*; and any person who shall wilfully give false evidence in any proceeding under this Act, shall be guilty of perjury; provided always, that no lord or tenant so summoned shall be bound to answer any questions as to his title.

6. It shall be lawful for the Commissioners, assistant Commissioners, and valuers, and their agents or servants respectively, upon giving reasonable notice to the occupier, to enter upon any of the lands and hereditaments proposed to be dealt with under the provisions of

this Act, and to make all necessary admeasurements, plans, and valuations of the same, without being subject to any action, obstruction, or hindrance, making compensation for all injury, if any occasioned thereby.

7. The valuers shall determine the value of the manorial rights and incidents of tenure from which the lands proposed to be dealt with are to be enfranchised, and shall determine the compensation to be received by the lord for such enfranchisement in manner hereinafter mentioned; that is to say, where such enfranchisement shall have been effected at the instance of the tenant, the compensation shall be a gross sum of money to be paid at the time of the completion of the enfranchisement, or in cases where the compensation exceeds 20*l.*, the same, if the said Commissioners shall so direct, and if all persons (if any) who shall have any mortgage, charge, or incumbrance affecting the lands enfranchised, and which shall have been in existence at the time of the passing of this Act, shall consent thereto, may remain as a first charge, under the provisions of this Act, on the lands enfranchised, until the expiration of such time from the day of such completion as the said Commissioners shall appoint, but not exceeding in any case 10 years; and interest at the rate of 4*l.* per centum per annum shall be payable thereon, or on such part thereof as shall from time to time remain unpaid, from the time of such completion as aforesaid half-yearly until full payment thereof; and where such enfranchisement shall have been effected at the instance of the lord, the compensation shall be an annual rent-charge to be issuing out of the lands enfranchised: Provided always, that the parties to any enfranchisement under this act may in any case, with the sanction of the Commissioners, agree that the compensation shall be either a gross sum of money to be paid or charged as aforesaid, or a yearly rent-charge, or a conveyance of land to be settled to the same uses as the manor of which the enfranchised lands are holden is settled, as provided in the said recited Acts with respect to enfranchisements effected by virtue thereof; and in every case the valuers shall frame an award, showing the amount, nature, and particulars of the compensation which shall be in full satisfaction of all manorial rights whatsoever, save as hereinafter mentioned.

8. In case any objection shall be made or question shall arise upon or prior to any admittance or in the course of such valuations, in relation to any alleged custom or the evidence thereof, or any matter of law or fact material to such valuation or arising on any enfranchisement, the same shall, on the request in writing and at the option of any one of the parties on either side of the matter in difference, be referred to the Commissioners or assistant Commissioner, who shall inquire into and ascertain the same; and the decision of such Commissioners or assistant Commissioners shall be final: Provided nevertheless, that where any one of the said party or parties

dissatisfied with any decision of such Commissioners or assistant Commissioner on any matter of law shall be desirous to appeal, then the like proceedings may and shall be had for obtaining the decision of one of the Superior Courts of Law at Westminster thereon, and such decision shall be binding in like manner as is provided by the said Act of the Session of the 4 & 5 Vict. c. 35, where a person is dissatisfied with a decision of such Commissioners or an assistant Commissioner which involves a point of law only, and the parties in difference are agreed upon the facts relating thereto: Provided always, that no such proceedings as aforesaid shall be had unless a request to the Commissioners to direct a case to be stated as in the said Act mentioned be made within 28 days after the decision in respect of which the appeal is desired.

9. After all such objections (if made) shall have been heard and determined, then the Commissioners shall, if they shall see fit, and after such investigation by themselves or by an assistant Commissioner as may seem to them necessary, confirm such award under their hands and seal as aforesaid, and such award so confirmed shall be forthwith registered at the office of the Commissioners, and a copy thereof shall be entered on the Court Rolls of the manor to which the same shall relate, but the same, whether so entered or not, shall, after registration at the office of the said Commissioners, be valid.

10. Any charge under this Act shall be a first charge on such lands, and shall have priority over all mortgages, charges, and incumbrances whatsoever affecting such lands, (except tithe commutation rent-charges, and any charges or rent-charges which may have been or shall be charged upon the same lands for the drainage thereof by virtue of any of the Statutes in that behalf), notwithstanding the actual priority in point of date or anterior title of such mortgages, charges, and incumbrances: Provided always, that notwithstanding any such charge, any monies already invested or any monies previously secured or charged thereon may be continued on the security of the same, notwithstanding the imposition of the said charge under this Act: Provided also, that no such charge shall have priority over any mortgage, charge, or incumbrance which at the time of the passing of this Act may affect the lands enfranchised, without the consent of the persons entitled to such mortgage, charge, or incumbrance.

11. Any enfranchisement of lands under this Act or the said recited Acts shall be by deed according to the form in the first Schedule to this Act annexed, or as near thereto as the circumstances of the case will admit, or by deed in any other form which the parties, with the consent of the Commissioners, may think fit, and which deed the lord shall be bound to execute within 28 days after the same shall be approved by the Commissioners on the same being tendered to him for that purpose; and all enfranchisements so made shall take effect

from the time of the execution of such deed by the lord, but not before, and shall be effectual to vest the land thereby conveyed in the tenant or other person to whom the lands shall be conveyed, free from any estates, rights, titles to dower and free bench, interests, incumbrances, claims, or demands affecting the manor of which the same lands are holden: Provided always, that in the meantime and until such enfranchisement shall so take effect all the rights, remedies, powers, privileges, and conditions of and affecting the lord and tenant respectively in regard to such lands, with all the incidents of tenure shall remain and continue unaffected.

12. Every charge under this Act shall be made by a certificate under the hands and seal of the Commissioners, to be called a certificate of charge; and such certificate shall specify the whole amount of principal money to be charged on the lands, enfranchised under the powers of this Act, subject to which the land is enfranchised, and may specify any place, to be agreed upon between the parties, as the place of payment of the principal money and interest charged by such certificate; and, if the parties so agree, or the said Commissioners shall so direct as aforesaid, such certificate may provide that such principal money, or any part or parts thereof, shall continue upon the security of such certificate for any term or terms of years, period or periods, in such certificate mentioned, not exceeding 10 years, and the land charged thereby may be described by reference to the enfranchisement thereof under the said Acts, or otherwise, as the Commissioners may think fit; and such certificate may be in the form set forth in the Schedule to this Act, or in such other form as the parties, with the consent of the Commissioners, may think proper, and shall be entered on the Court Roll of the manor.

13. Such certificate, and the charge thereby made, shall be transferable by endorsement of such certificate, and such endorsement may be in the form set forth in the Schedule to this Act, or to the like effect.

14. Every certificate of charge or transfer thereof issued or made under this Act shall be chargeable with the like stamp duties as are chargeable in respect of other mortgages and transfers thereof.

15. It shall be lawful for the said Commissioners, to correct and supply any manifest error or omission in any award, or in any deed of enfranchisement or charge under this Act, or any other instrument authorised by this Act to be made or issued by the said Commissioners, after such notice to the parties interested as the said Commissioners shall deem sufficient; provided that no such error or omission shall be corrected or supplied more than five years after the execution of any such award, deed or instrument.

16. In making any valuation under this Act the valuers shall take into account the facilities for improvement, customs of the manor, fines, heriots, quit-rents, chief-rents, escheats, for-

feitures, and all other incidents whatever of copyhold or customary tenure, and all other circumstances affecting or relating to the land which shall be included in such enfranchisement, and all advantages to arise therefrom, and shall make due allowance for the same.

17. In case such enfranchisement consideration, or the interest thereon, shall not be paid at the time stipulated or provided for payment thereof respectively, the lord or other person for the time being entitled to the benefit thereof shall become entitled to the rents and profits of the land in respect of which the same enfranchisement consideration or interest shall be due; and it shall be lawful for such lord or other person to proceed to obtain possession of the said land, or the rents and profits thereof, in like manner as if the land had remained unenfranchised, and been lawfully seized into the hands of the lord for some default of a tenant; and all the rights and remedies by the said recited Acts or any of them given for the recovery of rent-charges, sums of money, and other payments, shall be applicable to the sums of money, interest, and payments payable under this Act, in the same manner as if such consideration had been a consideration for an enfranchisement under the said Acts.

18. Where any lord or other person for the time being entitled to the benefit of any enfranchisement consideration, or the interest thereon, shall have obtained possession of the land under the powers and provisions of the said recited Acts or this Act, it shall be lawful for the said lord or other person as aforesaid to let such land, or any portion thereof, for any period not exceeding seven years, in possession, at such rent as can be reasonably obtained for the same; and the restitution of such land, on payment or satisfaction of the money due, and of all costs and expenses, shall be subject and without prejudice to any such lease.

19. The steward for the time being of any manor of which any lands enfranchised under this Act shall be parcel shall, on every such enfranchisement, be entitled to receive from the tenant, as a compensation for the trouble of such steward about such enfranchisement, and for the extinguishment of his office with respect to such lands, such a sum as the said Commissioners may direct, and, in the absence of such direction on the subject, such a sum as will amount to one set of fees on surrender and admittance for each of the tenements included in such enfranchisement, such fees to be calculated according to the reasonable custom or usage prevalent in the manor whereof such lands shall be parcel, and in case the parties shall differ about the same the amount shall be ascertained by the Commissioners; and the steward, in consideration of such compensation, shall prepare and deliver to the tenant a proper deed of enfranchisement, duly executed by the lord, without making any charge for the same, or for completing the enfranchisement, save stamp duty and parchment: Provided always, that if more than one set of fees is demanded by the steward, it shall be lawful for the said

Commissioners to moderate and tax the amount of such fees to such sum as shall appear to them just and reasonable.

20. At any time after an enfranchisement effected under the said recited Acts or this Act, it shall be lawful for any persons seized of or interested in the lands which have been so enfranchised to have access to and to inspect the Court Rolls of the manor of which the said lands were holden, and to demand and have copies thereof, on payment of a reasonable sum for the same; and the said Commissioners, if they shall think it necessary or expedient, may fix a scale of fees to be payable to the steward or other person having custody of the Court Rolls for such inspection of the Court Rolls, and for making all necessary extracts or copies thereof.

21. When and as soon as all the lands held of any manor shall be enfranchised, the lord or other person having custody of the Court Rolls of such manor may, if he thinks fit, give up and hand over to the said Commissioners all such Court Rolls; and from thenceforth all persons seized of or interested in such lands shall have access to and may inspect such Court Rolls, and obtain copies thereof, on the payment of such reasonable fees as to the said Commissioners may seem fit and proper.

22. Previous to any enfranchisement under this Act, it shall be lawful for the lord and steward, if they shall see fit, and if there shall be no steward then for the lord alone, to make a solemn declaration, in such form as the said Commissioners shall direct, and to be taken and subscribed as solemn declarations are by an Act passed in the Session held in the 5 & 6 Wm. 4, c. 62, directed to be taken and subscribed, stating therein the nature and extent of the estate and interest of the lord in the manor of which he is such lord, and the date and short particulars of the deed, will, or other instrument under which he claims or derives title, and the name and style or other designation or description of the person in whose name the Court of any such manor was then last holden, and the date or time of the holding of such Court, and the incumbrances, if any, whether by mortgage, judgment, or otherwise, which affect such manor; and it shall be lawful for the said Commissioners, and they are hereby directed to approve of such title for the purposes of this Act, which approval shall be testified under their hands and seal, upon such evidence alone, unless they shall be of opinion that further information is necessary in the respects aforesaid; but if the said Commissioners shall consider that such evidence does not fully and truly disclose all such particulars as are necessary, or if no such declaration shall be made, or if the lord shall refuse or decline or fail to give such information and evidence as they shall deem proper and necessary to show a satisfactory *prima facie* title in the lord, or in persons claiming under or in trust for him, and if the said Commissioners shall consider either that the title of the lord is not satisfactory, or that the incumbrancers should be protected,

then, if they think the justice of the case requires it, they may direct that the enfranchisement consideration shall be invested as herein-after directed in case of lords under disability.

23. In all cases in which the lord shall apply to the Commissioners to effect an enfranchisement as aforesaid, it shall be lawful for the tenant of the lands so proposed to be enfranchised to require that the said Commissioners shall satisfy themselves, in such way and by such evidence as they shall see fit, of the title of such lord of the manor of which the lands are held.

24. In cases where the identity of any lands described as to quantity in the Court Books or Rolls of any manor cannot be ascertained to the satisfaction of the valuers, such lands shall be taken at the quantities mentioned in the Court Books or Rolls of the manor, and as to any lands the quantities of which are not specified in the Court Books or Rolls in any manor, the same shall be taken at such quantities as such valuers may determine; and it shall be lawful for the lord of any manor, or for any tenant of any manor, at any time hereafter, in case of any doubt or difference of opinion as to the identity of any lands, to apply to the Commissioners to define the boundaries thereof for the purpose of any enfranchisement under this Act or the said recited Acts; and the expenses of identification shall be borne by the party making such application, unless the Commissioners shall otherwise direct; and the Commissioners shall proceed, in such manner as they shall see fit, to ascertain, identify, and define such boundaries; and such identification and definition of boundaries to be made by the Commissioners shall be final and conclusive on all parties for the purposes of any such enfranchisement.

25. With respect to any land proposed by any tenant to be enfranchised under this Act, in case the lord shall show to the satisfaction of the Commissioners that any change in the condition of such land, which but for this Act would or might have been prevented by the incidents or conditions of the tenure thereof, will prejudicially affect in enjoyment or value the mansion, house, park, gardens, or pleasure grounds of such lord, and in case such lord shall by writing under his hand offer to purchase the tenant's interest in such land so proposed to be enfranchised, and shall give notice to the tenant of such offer, then, unless the tenant shall accept such offer within 28 days after receiving notice thereof, such land shall remain unenfranchised, unless the Commissioners shall think fit to impose such terms and conditions, in case of enfranchisement, as shall in their judgment be sufficient to protect the interests of the lord; and in case the tenant shall within 28 days as aforesaid signify in writing to the Commissioners his acceptance of the said offer, such offer by the lord and acceptance by the tenant shall be binding both upon lord and tenant; and in case the lord and tenant shall not within such time as the Commissioners shall limit agree on the value of the rights and interest of the tenant, it shall

be lawful for the Commissioners to appoint a valuer for the purpose of ascertaining such value, or to refer the same to the valuers, if any, then acting in the enfranchisement; and all the costs, charges, and expenses of such valuation and attending such purchase shall be borne by the lord; and when such value shall have been agreed upon or ascertained as aforesaid the Commissioners shall issue a certificate under their hands and seal, which shall state the land which shall have been sold to the lord, and the consideration money for the same, and shall declare that upon payment of the consideration money therein mentioned within a time to be therein limited such land shall at the time of such payment be surrendered or released by the tenant (at the expense of the lord) to the lord, and thereupon such land shall vest in such lord accordingly: Provided always, that in case such consideration moneys shall not be paid within the time limited by the Commissioners, or within such further time as the Commissioners may have granted in that behalf, and it shall appear to the Commissioners that the same shall have remained unpaid by the default of the lord, it shall be lawful for the Commissioners to cancel such certificate, and such enfranchisement may be proceeded with as if such offer and acceptance as aforesaid had not been made, and all costs which the Commissioners shall certify to have been incurred by the tenant in consequence of such offer, acceptance, and default shall be paid by the lord to the tenant.

26. Provided also, That where the lord of a manor by whom any purchase is hereby authorised to be made shall not be seised in fee simple or fee tail of and in or otherwise entitled to an absolute power of disposition over the manor, it shall be lawful for such lord, with the consent of the Commissioners, to raise the consideration for such purchase, and the expenses of the same, by a charge of or upon the same manor, or any lands settled therewith to the same uses, such charge to be made in such form, and upon such terms, and at such rate of interest, as the Commissioners shall direct from time to time.

27. And whereas in many manors heriots are by custom due and payable to the lord by tenants of freehold or customary freehold lands holden of such manors: Be it therefore enacted, That at any time after any such heriot shall be due or payable with respect to any such freehold lands on or after the 1st day of July, 1853, it shall be lawful for the lord or the tenant to require and compel the extinguishment of all such claim to heriots, and the enfranchisement of the lands subject thereto, in the same way as if such lands were copyhold, and the same proceedings shall thereupon be had as are herein mentioned with reference to the enfranchisement of copyhold lands, or as near thereto as the nature of the case will admit.

28. Before any valuer shall enter upon the valuation under this Act he shall in the presence of a justice of the peace make and sub-

scribe the following declaration (that is to say),

"I, A. B., do declare, That I will faithfully, to the best of my ability, value, hear, and determine the matters referred to me under the Copyhold Acts. A. B.

"Made and subscribed in the presence of

And such declaration shall be annexed to the schedule of valuation, when made; and if any valuer, having made such declaration, shall wilfully act contrary thereto, he shall be guilty of a misdemeanor.

29. In case the interest payable in respect of any gross sum of money, pursuant to any award under this Act, or any part of the same, shall be in arrear for 30 days after the same shall become due, it shall be lawful for the person for the time being entitled to receive such interest to levy the same by the same means and remedies and in the same manner in all respects as if the same had been rent in arrear upon a lease for years.

30. The expenses of the proceedings for effecting any enfranchisement under this Act, and all expenses which in the judgment of the said Commissioners may be incidental thereto, whether for the proof of title, the production of documents, expenses of witnesses, or otherwise, shall be borne by the party, whether lord or tenant, who shall have required the enfranchisement, but no costs or expenses shall be due or recoverable from any person until the same shall have been certified, under the hands and seal of the said Commissioners, or of an assistant Commissioner, to have been reasonably and properly incurred; and in case any dispute or difference shall arise as to the amount of such expenses, the certificate of the Commissioners or assistant Commissioner shall be final, and any person to whom such certificate shall be granted shall have the same means and remedies for the recovery of the sum mentioned therein as are provided by the said recited Acts or by this Act for the recovery of the consideration for an enfranchisement under this Act.

31. In every case in which the lord shall require and compel an enfranchisement under this Act, where such lord shall be an ecclesiastical corporation or a corporation sole not having an absolute power of sale, or shall have only a limited interest in the manor or be a trustee thereof, the expenses of the proceedings for effecting such enfranchisement, and all expenses which in the judgment of the said Commissioners may be incidental thereto, whether for the proof of title, the production of documents, expenses of witnesses, or otherwise (the amount of such expenses being subject to the approval and certificate of the said Commissioners as hereinbefore is mentioned), shall be paid out of the first monies to be received for any enfranchisement to be effected under this Act, when the consideration for such enfranchisement shall be a gross sum of money; and in cases where such consideration shall not be a gross sum of money, then the

said expenses shall be charged, together with interest for the same, at the rate of not exceeding 4l. per centum per annum, on the said manor or other lands settled or held therewith, in such manner as to the said Commissioners may seem fit and proper.

32. In every case in which the tenant shall require and compel an enfranchisement under this Act, where such tenant shall have only a limited interest in the lands enfranchised, or be a trustee thereof, he shall be entitled to charge the expenses of the proceedings for effecting such enfranchisement, and all expenses which in the judgment of the said Commissioners may be incidental thereto, whether for the proof of title, the production of documents, expenses of witnesses, or otherwise (the amount of such expenses being subject to the approval of the said Commissioners as hereinbefore is mentioned), on the lands enfranchised, and such expenses, and also the consideration money for such enfranchisement, whenever such consideration shall be a gross sum of money, may, by a simple entry on the Court Rolls of the manor, and for which entry the steward shall only charge such a sum as the said Commissioners shall direct, be charged, together with interest for the same at the rate of not exceeding 4l. per centum per annum, on the lands enfranchised, in such manner as to the said Commissioners shall seem fit and proper: Provided always, that any gross sum or rent-charge constituting the consideration for any such enfranchisement shall have priority over any sum so charged for expenses.

33. The confirmation under the hands and seal of the Commissioners of any award, or the execution by the Commissioners of any deed or instrument whereby any enfranchisement shall be effected under the said Acts or this Act, shall be conclusive evidence that all the directions in relation to the enfranchisement intended to be effected by means of such award, deed, or instrument, which ought respectively to have been obeyed or performed previously to such confirmation or execution respectively, have been obeyed and performed; and no such award, deed, or instrument shall be impeached by reason of any omission, mistake, or informality therein, or in any proceeding relating thereunto, or on account of any want of any notices or consents required by the said Acts or this Act, or on account of any defects or omissions in any previous proceedings whatever in the matter of such enfranchisement.

34. From and after the final confirmation of any schedule of apportionment under the said recited Acts and from and after the final enfranchisement of any lands under this Act or the said recited Acts, the several lands included in any such enfranchisement shall thenceforth cease to be subject to the customs of borough English or gavelkind, or to any other customary mode of descent, or to any custom relating to dower or freebench or tenancy by the curtesy of England, or to any

other custom whatever; and all the laws relating to descents or to estates of dower or estates by the curtesy of England which shall for the time being affect and be applicable to lands held in free and common soccage shall thenceforth affect and be applicable to the lands included in every such enfranchisement: Provided always, that nothing herein contained as to curtesy or dower or freebench shall extend or be applicable to the case of any person who shall have been married before such enfranchisement shall have been completed: Provided always, that nothing in this Act shall affect the custom of gavelkind as the same now exists and prevails in the county of Kent.

35. Notwithstanding anything herein contained, it shall be lawful for the Commissioners from time to time to suspend any proceedings under this Act for the enfranchisement of any land, where any peculiar circumstances render it impossible, in the opinion of the said Commissioners, to decide on the prospective value of the lands to be affected by such proposed enfranchisement, or where any especial hardship or injustice would unavoidably result from any compulsory proceeding: Provided always, that when the said Commissioners shall so suspend any proposed enfranchisement they shall state the reasons of such suspension in their general report, which shall be laid before Parliament as directed by the first-recited Act.

36. In all cases in which the person for the time being entitled to the receipt of any rent-charge under the said recited Acts or this Act shall be entitled thereto for a limited estate or interest only, or shall be a corporation not authorised to make an absolute sale of such rent-charge otherwise than under the provisions of this Act, it shall be lawful for such person, with the consent of the said Commissioners, testified under their hands and seal, or, in the case of coverture, infancy, idiotcy, lunacy, or other incapacity, with the consent of the husband, guardian, committee, or trustee of such person so under disability, to sell and transfer such rent-charge, the payment for which shall be made in manner hereinafter-mentioned.

37. In every case in which a rent-charge is payable under the provisions of the recited Acts or this Act the Commissioners shall, upon the request of the owners of land chargeable with such rent-charge, or any of them, certify under the hands and seal of the Commissioners the sum of money in consideration of which such rent-charge may be redeemed; and when it shall appear to the Commissioners that payment or tender of such consideration money has been duly made, it shall be lawful for the Commissioners to certify that such rent-charge has been redeemed under the provisions of this Act, and such certificate shall be final and conclusive: Provided always, that no such redemption shall be effected in the case of rent-charges created before the passing of this Act, under the provisions of the said recited Acts, except with the consent in writing of the person or persons entitled to the receipt of such rent-charge.

33. Where the person entitled to a rent-charge redeemable under the provisions of this Act shall be absolutely entitled thereto in fee simple in possession, or shall be enabled to dispose of the fee simple in possession independently of the provisions of this Act, and shall not be a spiritual person entitled in respect of his benefice or cure, or a corporation prevented from aliening such rent-charge otherwise than under the provisions of this Act, a payment or tender to the person so entitled of the sum of money certified by the Commissioners as aforesaid after six months' notice to the person entitled to such rent-charge shall be deemed a due payment of the consideration money, and in every other case the payment of the sum of money so certified according to the provisions hereinafter contained shall be deemed a due payment of the consideration money.

39. In all cases in which the person for the time being entitled to any rent-charge subject to be redeemed or sold under the provisions of this Act, or entitled to any gross sum payable by way of compensation for enfranchisement, shall be only entitled thereto for a limited estate or interest therein, or as trustee for sale or otherwise, without power to give an effectual discharge for the same, or shall be under any disability, or shall be a corporation not authorised to make an absolute sale of such rent-charge otherwise than under the provisions of this Act, the consideration money to be paid for the redemption or sale of such rent-charge, or as compensation for such enfranchisement, shall be applied in manner hereinafter provided; (that is to say,) shall, at the option of the person for the time being entitled as aforesaid, be paid into the Bank of England in the name and with the privity of the Accountant-General of the Court of Chancery, to be placed to his account there *ex parte* the copyhold Commissioners, pursuant to the method prescribed by any Act for the time being in force for regulating monies paid into the said Court; and such monies shall remain so deposited until the same be applied to some one or more of the following purposes (that is to say), in the purchase or redemption of the land tax, or the discharge of any rent or incumbrance affecting the rent-charge in respect of which such money shall have been paid, or the manorial incidents for which the same shall have been substituted, or affecting other hereditaments settled therewith to the same or the like uses, trusts, or purposes, or in the purchase of other lands, to be conveyed, limited, and settled upon the like uses, trusts, purposes, and in the same manner, as the rent-charge for the redemption of which such money shall have been paid stood settled, or in payment to any party becoming absolutely entitled to such money; and such money may be so applied as aforesaid upon an order of the Court of Chancery made on the petition of the party who would have been entitled to the receipt of the rent-charge in respect of which such money shall have been deposited; and until the money can be so applied it may, upon the like order, be invested by the said Account-



ant-General in the purchase of three *per centum* Consolidated or three *per centum* Reduced Bank Annuities, or in Government or Real Securities, and the dividends, interest, or annual income thereof paid to the party who would for the time being have been entitled to the rent-charge in case the same had not been redeemed; or otherwise such consideration money may be paid, at the like option of the person for the time being so entitled, to trustees acting under the will, conveyance, or settlement under which such person having such limited interest shall be entitled to or interested in such rent-charge, or to such one or more of such trustees as the said Commissioners may approve of and direct, or if there are no such trustees, then into the hands of trustees to be nominated under the hands and seal of the said Commissioners; and the money when so paid to such trustees, shall be applied by the said trustees, with the consent of the said Commissioners, in the manner hereinbefore directed concerning any money to be paid for redemption or sale into the Bank of England in the name and with the privity of the said Accountant-General; and upon every vacancy in the office of any trustee appointed by the said Commissioners some other fit person shall be appointed by them in like manner.

40. Where any consideration money so to be paid as last hereinbefore-mentioned shall not exceed the sum of 20*l.* for the redemption or sale of all the rent-charge which shall be redeemable under this Act in any one manor, the same shall be paid, if the said Commissioners shall so direct, to the person for the time being entitled to the rent-charge, for his own use and benefit; or in case of coverture, infancy, idiotcy, lunacy, or other incapacity of the person for the time being entitled, then such money shall be paid for the use of the person so entitled, to the husband, guardian, committee, or trustee of such person.

41. In any commutation or enfranchisement to be hereafter effected under or by virtue of the said recited Acts it shall not be imperative to make the commutation fines or rent-charge, or enfranchisement rent-charge, variable with the prices of grain, but the same or any of them may, at the option of the parties effecting such commutation or enfranchisement, or at the discretion of the Commissioners, as the case may require, be fixed in money or be made so variable as aforesaid.

42. Any occupying tenant of any lands to be enfranchised under this Act who shall pay any rent-charge or interest which may become payable under this Act shall be entitled to deduct the amount thereof from the rent payable by him to his landlord, and shall be allowed the same in account with the said landlord.

43. A surrenderee by way of mortgage under a surrender entered on the Court Rolls in possession, or in the receipt of the rents and profits of land, shall be deemed a tenant within the meaning of this Act, entitled to obtain or join in obtaining and effecting enfranchisement, and redeeming a rent-charge, under this and the said recited Acts, by and with the approbation

of the said Commissioners; and any money paid by any mortgagee for or in respect of the consideration or costs of enfranchisement or redemption of rent-charge under this and the said recited Acts shall be added to the amount due to him as mortgagee, and the land shall not be redeemable without payment of such money, with interest thereon.

44. Where land enfranchised under this or the said recited Acts was immediately before such enfranchisement subject to any subsisting lease or demise at will or for any greater interest, the freehold into which such estate is so converted shall be the reversion immediately expectant upon such lease or demise at will, and the rents and services reserved and made payable upon such lease or demise shall be incident and annexed to such reversion; and the covenants or agreements, whether expressed or implied, on the part of both the lessor and lessee, shall run with the land and with the reversion respectively; and such enfranchisement shall not prejudice or affect any right of distress, entry, or action accruing in respect of such lease or demise.

45. Nothing herein contained shall operate or deprive any tenant of any commonable right to which he may be entitled in respect of such lands, but such right shall continue attached thereto, notwithstanding the same shall have become freehold.

46. No enfranchisement under this Act shall, except as herein is mentioned, affect the rights or interests of any person in, to, or out of the lands enfranchised under any will, settlement, mortgage, or otherwise, but the right of every such person shall continue to attach upon the lands enfranchised, in the same way, as nearly as may be, as if the freehold had been comprised in and had been devised, conveyed, charged, or otherwise disposed of by the will, settlement, mortgage, or other instrument or disposition under which any such person shall claim.

47. Provided always, That if any enfranchisement consideration money shall be paid to any lord whose title shall thereafter prove to be bad or insufficient, the rightful owner of the manor or his representatives shall be entitled to recover against such lord or his representatives the amount or value of such consideration money as money had and received to the use of such rightful owner, and interest thereon at the rate of 5*l.* *per centum per annum* from the time of such title so proving to be bad or insufficient; and that if any tenant or person claiming to be tenant shall, after payment by him of any enfranchisement consideration money, be evicted from the lands enfranchised, by an adverse claimant, such tenant or person shall be entitled to claim the repayment of such consideration money against the lands enfranchised; and the amount thereof shall be a charge upon the lands enfranchised, and shall carry interest at the rate of 4*l.* *per centum per annum* from the time of such eviction.

48. No enfranchisement under this Act shall extend to or affect the estate or rights of any

lord or tenant in or to any mines, minerals, limestone, lime, clay, stone gravel, pits, or quarries within or under the lands enfranchised, or within or under any other lands, or any rights of entry, rights of way and search, or other easements of any lord or tenant in, upon, through, over, or under any lands, or any powers which in respect of property in the soil might but for such enfranchisements have been exercised, for the purpose of enabling the said lord or tenant, their or his agents, workmen, or assigns, more effectually to search for, win, and work any mines, minerals, pits, or quarries, or to remove and carry away any minerals, limestone, lime, stones, clay, gravel, or other substances had or gotten therefrom, or the rights, franchises, royalties, or privileges of any lord in respect of any fairs, markets, rights of chase or warren, piscaries, or other rights of hunting, shooting, fishing, fowling, or otherwise taking game, fish, or fowl, unless with the express consent in writing of such lord or tenant; and nothing in this Act shall be held or construed to extend to any copyhold lands held for a life or lives or for years, where the tenant thereof hath not a right of renewal.

49. Copies of and extracts from every award under this Act which shall be registered under this Act at the office of the Commissioners, purporting to be sealed or stamped with the seal of the Commissioners, shall respectively be received in evidence without any further proof thereof; and a copy entered under this Act on the Court Rolls of every such award shall be as available for the purposes of evidence as any entry on the Court Rolls, and a copy of or extract from any such enrolled copy shall be as available for the purposes of evidence as a copy of an entry on the Court Rolls.

50. No agreement, valuation, schedule, award, or power of attorney under this Act shall be chargeable with stamp duty.

51. Any person obstructing or hindering any Commissioner, assistant Commissioner, valuer, or umpire acting under the powers granted by the said recited Acts or by this Act, being convicted thereof before two justices of the peace, shall forfeit the sum of 5*l*.

52. In this Act, unless where the context shows that the words hereinafter mentioned are used in a different or more restricted sense, they shall be understood in manner hereinafter mentioned; that is to say, the word "lands" shall extend to and include messuages, tenements, and corporeal or incorporeal hereditaments, subject to any manorial rights, or any undivided part or share therein; the word "valuers" shall apply to and include a single valuer, where authorised to act alone, or any umpire to be appointed as herein mentioned, and also the Commissioners or the Commissioner or assistant Commissioner proceeding upon or with any valuation under this Act in cases where such single valuer, umpire, Commissioner, or assistant Commissioner respectively shall act in any such valuation; the word "manor" shall extend to such portion

or portions of a manor as the said Commissioners shall by any order in writing under their hands and seal direct to be considered as a manor for the purpose of effecting any enfranchisement under this Act; the word "lord" shall extend to and include the lord or lords of any manor, whether seised for life or in tail or in fee simple, and all ecclesiastical lords seised in right of the Church or otherwise, and lords farmers holding under them, and any body politic, corporate, or collegiate, and all lords seised of any manor, whether they have or have not an absolute power of disposing of the same; and the word "steward" shall extend to and include a deputy steward or clerk acting as such for the time being.

53. This Act shall be taken and construed as part of the first-recited Act, and the Acts amending and explaining the same; and all the enactments therein contained as to enfranchisements effected under the provisions thereof shall be deemed and taken to apply to enfranchisements under this Act, and to the rights of all parties thereto, as if such enactments were here again repeated, except so far as is hereinbefore otherwise provided for; and all enfranchisements which may have taken place under such Acts or any of them, and all matters and things incident thereto, shall be of the same force, validity, and effect as if the provisions of this Act had been contained in the said first recited Act.

54. In citing or referring to the said recited Acts and this Act, or any of them, in other Acts or legal instruments, it shall be sufficient to use the expression "The Copyhold Acts," or "The Copyhold Act, 1841," "The Copyhold Act, 1843," "The Copyhold Act, 1844," or "The Copyhold Act, 1852," as the case may be.

55. Provided always, That nothing herein contained shall interfere with or prevent or impede the enfranchisement of any lands whatsoever which may be enfranchised irrespective of this Act, where parties competent to do so shall agree on such enfranchisement, or the exercise of any powers contained in any other Acts of Parliament.

## SCHEDULE.

### No. 1.

#### FORM OF DEED OF ENFRANCHISEMENT.

This Indenture, made the       day of       , in the year       , between A. B., lord of the manor of       , of the one part, and C. D., of       , in the county of       , a tenant of the said manor, of the other part: Whereas on or about the       day of       , the said [tenant] was admitted tenant to the lands parcel of the said manor described in the Schedule hereto, upon an absolute surrender passed to his use by       [or by virtue of a bargain and sale from       or by virtue of the will of       or as custom- any heir of       as the case may be]:

Now this Indenture witnesseth, That in consideration of the sum of \_\_\_\_\_ pounds sterling by the said [tenant] to the said [lord] now paid, the receipt of which the said [lord] hereby acknowledges [or in consideration of the rent-charge to be reserved, as the case may be], he the said [lord], in exercise of any power given him by the said Copyhold Acts, or any other power whatsoever, and with the consent of the Copyhold Commissioners, hereby enfranchises and releases unto the said [tenant], his heirs and assigns, all the lands to which the said [tenant] was so admitted tenant as hereinbefore recited, and which are described in the Schedule hereto, together with their appurtenances, To hold the said lands (subject to the [here state the gross sum of money or rent-charge] secured to the said \_\_\_\_\_ by the certificate of the Copyhold Commissioners, as the case may require,) unto the said [tenant], his heirs and assigns [here state any uses which may be required], as freehold, henceforth and for ever, discharged by these presents from all fines, heriots, reliefs, quit-rents, and all other incidents whatsoever of copyhold or customary tenure: Provided always, that nothing in this deed contained shall prejudice or affect the rights or remedies of the said [lord] in respect of any lands held of the said manor, other than those comprised in the Schedule hereto, nor any of the rights reserved by the Copyhold Act, 1852, section 48. In witness, &c.

#### THE SCHEDULE.

##### No. 2.

CERTIFICATE of CHARGE affecting LANDS comprised in an Enfranchisement in the Manor of \_\_\_\_\_

's Enfranchisement.

We, \_\_\_\_\_ the Copyhold Commissioners, do hereby certify, That the [here state the gross sum of money, or the annual rent-charge, which is the consideration for the enfranchisement, as the case may be] has been awarded on account of the enfranchisement of the lands described in the Schedule hereto, and we hereby charge the same lands with the payment of the [here state the gross sum of money, or annual rent-charge, as the case may be; and, if a gross sum of money, add, with interest thereon at the rate of \_\_\_\_\_ pounds per centum per annum] [here insert the terms of payment of the principal and interest (if any), and the place (if any) agreed on for payment thereof]; and we certify, that the whole principal money charged on the said lands under certificates of charge amounts to the sum of \_\_\_\_\_ pounds, and that the said lands were enfranchised subject to [mention any gross sums or annual rent-charges (other than tithe rent-charges) subject to which the lands were enfranchised]. In witness whereof we the said \_\_\_\_\_ and \_\_\_\_\_ have hereunto set our hands and the seal of the said Commissioners, this \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord, 185 \_\_\_\_\_.

#### THE SCHEDULE.

E. F.  
G. H.

[Seal of the said Commissioners.]

[Here may follow receipts for principal and interest respectively.]

##### No. 3.

#### FORM OF ENDORSEMENT OF TRANSFER OF CERTIFICATE.

I A. B. of \_\_\_\_\_ hereby transfer the within-written certificate to C. D. of \_\_\_\_\_  
Dated this \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_  
A. B.

#### EXTRA COSTS OF TOWN CLERK, NOT INCLUDED IN SALARY.

THE council of a borough passed a resolution prescribing the duties of the town clerk, and fixing his salary for the discharge of such duties at 250*l*. Among other functions, he was "to act as the professional adviser of the mayor and council in the business of the council." And he was to "be paid the usual professional charges for conducting or opposing bills in Parliament, conducting actions or suits at Law or in Equity, and preparing leases, conveyances or securities;" and to "be paid all travelling and other expenses out of pocket." A town clerk (being an attorney) was appointed after the passing of this resolution.

Payment of a borough-rate being resisted by a township within the borough, with an intimation that the overseers would not pay anything except under legal obligation, the council directed their finance committee to take such proceedings as they might deem expedient for enforcing payment and maintaining the validity of the rate; the committee were likewise authorised to give bonds of indemnity to overseers and others employed in the collection. The committee directed the town clerk to prepare a bond of indemnity to the overseers of the township, under counsel's advice. The bond was prepared, and objected to by the overseers. The town clerk, under the direction of the committee, went to London and attended conferences between counsel for the overseers and for the corporation, with a view to an arrangement. Finally, the form of the rate was altered; proceedings were taken on behalf of the council to compel payment; and the rate was levied. The town clerk then delivered a bill to the corporation, including charges for instructing and advising with counsel upon the bond of indemnity and upon the forms of rates; correspondence and conferences with the

solicitor for the overseers on the subject of the rate; expenses and loss of time in proceeding to London for the purpose of attending the conferences, in advising on several occasions with counsel, and in journeys to Wakefield and Manchester for the purpose of conferring with the clerks of the peace and town clerks of those boroughs upon the proper forms of rates. The services had been performed under the instructions of the finance committee. The committee ordered payment of the charges, and they were paid.

On certiorari, bringing their order before this Court, under Stat. 7 W. 4, and 1 Vict. c. 78, s. 44, Lord Campbell, C. J., in delivering the judgment of the Court, said—

"This is an application under Stat. 7 W. 4, and 1 Vict. c. 78, s. 44, which, after reciting that 'it is expedient to give all persons interested in the borough fund of every borough a more direct and easy remedy for any misapplication of such fund,' enacts, that any order of the council for the payment of money out of the borough fund may be removed into this Court by certiorari, 'and that such order may be disallowed or confirmed upon motion and hearing, with costs, according to the judgment and discretion of the said Court:' a most salutary enactment, but which leaves it in our discretion to decide whether the order complained of is or is not a 'misapplication.' I think it would not be so on the mere ground that the payment could not be enforced: in such a case we must not look at mere technicalities, but must see whether a grievance really exists which the Court ought to redress. Our discretionary power under the Statute, in this respect, will apply as much to setting aside or upholding the order as to granting or refusing costs. We are called upon to set aside this order altogether as illegal, because the payments comprised in it are no part of the 250*l.* which the council have contracted to pay, and are in consideration of services for which there was no lawful retainer. But I think, as to a part of these charges, that, as the business was done fairly and *bona fide* for the benefit of the ratepayers, and the sums have been *bona fide* paid to the town clerk, the question as to the form of the retainer is not material, and we have no authority to interfere and order the sums to be refunded. I agree that we should look with great jealousy at the charges made by a town clerk who is also an attorney; and I should have been well pleased if a provision had been introduced into the Municipal Corporation Act that, where the town clerk is an attorney, nothing should be paid him for extra business till his bill has been taxed. But I think that there are items here, and those the principal ones comprised in the order, which are not covered by the 250*l.* salary. Undoubtedly the town clerk is bound by the terms in which certain services are excepted

from among those which the salary covers. It is specified that he shall be paid 'the usual professional charges for conducting or opposing Bills in Parliament,' and 'conducting actions or suits at law or in equity.' But on a fair construction, I think this is not confined to actual proceedings in an action or suit, but would have extended, for instance, to a mandamus, if one had been directed for the purpose of settling a question in dispute. Suppose there had been an action; at what point would the town clerk have been entitled to commence his charges? The question would be, when a *lis mota* began. Everything that was then done with a view to the action, or to the preventing of it, would have been within the excepting clause. In the present case, if the proceedings threatened had resulted in a mandamus, the town clerk would clearly have been entitled to the usual professional charges; if so, he is entitled to them here, for having prevented such litigation by his laudable exertions made under the sanction of the town council. Therefore, I think that, as to the bulk of the charges, amounting to 54*l.*, his claim is well founded. As to the other items, it may be a question to what extent he is entitled. I do not know whether the whole demand ought not to be submitted to taxation; when that has been done, and the Master has reported, we can make our final rule accordingly." *Regina v. Prest*, 16 Q. B. 32.

## THE EXAMINATION OF ARTICLED CLERKS.

To the Editor of the Legal Observer.

SIR,—You would confer a great favour upon me, in common with my fellow students who intend to apply for examination next Michaelmas Term, if you would inform us whether we shall be examined upon the law as it now stands, or according to the alterations made by the "Common Law Procedure" and other Acts of the last Session of Parliament. If so, it will be a very great tax upon us to be examined upon that which will only have been the law of the land for a few days, especially as I (in common with others) have been engaged in the study and practice of the Common Law now in existence and force.

A LAW STUDENT.

[The practice of the Examiners has been not to examine on New Statutes and Orders of Court, until they have been some time in operation; and we have no doubt that the important Acts of the last Session, which do not come into effect till next Term, will not be included in the examination of Michaelmas Term, the more especially as the Rules and Orders upon them have not yet been made.—ED.]

## WRITS OF POSSESSION RETURNABLE IMMEDIATELY.

NOT EXECUTED FOR THREE YEARS.

*Doe dem. Hudson v. Roe.*

In this case (reported p. 268, *ante*), the writ of possession was made returnable immediately, and not on a day certain conformably with the old practice,—no rule having been made to the contrary. The enactment making all writs of execution returnable immediately is applicable to personal actions, and not, it appears, to an action of ejectment. The writ was held over for three years before it was actually enforced, and the judgment was never registered as required by the Act relating to registry of judgments.

The purchaser of the property, had searched at the office for registry of judgments in Serjeants' Inn and found no judgment entered, and he had no knowledge that a judgment in ejectment had been recovered. It is contended that the office in Serjeants' Inn is the only place where a knowledge of the fact could be obtained, the real names and residences of the parties being there fully entered,—while at the office *where the judgments are signed* the only information to be obtained is a succession of entries: *Surrey—Doe on dem. of ——— v. Roe*, giving no information as to *what part* of the county of Surrey or whose land had been recovered by *John Doe v. Richard Roe*; and leaving a purchaser in total ignorance of the fact.

In a case like the present, where a purchase is made of a needy man, the loss, not only of the land, but the expenses of resisting what is considered an unjust claim, falls upon a third and innocent party, who has no cognizance of what has taken place, except through the *Public Office* where *all* judgments are required by Act of Parliament to be entered, and in this case *no entry* had been made, and the protection intended for purchasers rendered null and void.

Again, as to the *return* of the writ. No rule having been made by the Judges respecting writs of possession, and the Act altering the return of writs referring to personal actions only, the hardship, nay injustice, of making the purchaser whose name had been joined in the application to the Court to set aside the judgment and writ of possession for irregularity is very apparent.

According to the present decision, it behoves all solicitors concerned for purchasers to search the old judgment offices for ejectments, but what light that will afford, by a mere entry of a county, without adding the *locus in quo*, or the names of the real parties, plaintiffs and defendants, will puzzle the Profession to know. In the present case of a small purchase, the expenses have fallen on the purchaser, the vendor being poor and the amount of costs, with the purchase, &c., is more than the value of the land.

T.

## LEGAL OBITUARY.

AMONGST other Members of the New Parliament who have died since their recent election, we lament to notice Thomas Colpitts Granger, Esq., of the Northern Circuit, one of her Majesty's Counsel, Recorder of Hull, and Member for the city of Durham. Mr. Granger was called to the Bar by the Honourable Society of the Inner Temple on the 14th May, 1830. The learned Counsel was associated with Mr. Serjeant Manning and Mr. Scott in the Common Pleas Reports. Mr. Granger was taken suddenly ill on the Circuit, and died on the 5th instant.

Mr. R. Watson, the Member for Peterborough, died on the 24th July; and Mr. Duncaft, the Member for Oldham, on July 27.

## VACATION RAMBLES.

## TERMINATION OF THE CIRCUIT.

"THE day before I left Gloucester and all the low fevers of Circuit care, to plunge into the delights of our glorious holidays, known among men by those inadequate terms, 'The Long Vacation;' yet it was only this morning that I felt the 'sober certainty' of its 'waking bliss.' My homeward journey, even when mounting the stony pinnacle of Birdlip, and drinking in the sun-lit beauty of the Vale of Gloucester, was perplexed and almost saddened by the resolute intrusion of images of past labours which would not be dispelled; the influences of *Nisi Prius* still darkened hope and joy, as the phantoms of a hideous dream linger awhile in the light of day; and I could not stifle vain regrets for opportunities lost, temper idly ruffled, adverse witnesses treated too often as if they were enemies,—the flaws and starts, omissions and mistakes, incidental to excited advocacy—faults of the moment, but admitting of no repair. But to-day, invigorated by the air of home, I bid these shadows defiance, they are gone till the 2nd of November; and all the interval is mine to live in! Notwithstanding my veneration for school-day experiences, I doubt whether the realisation of the Midsummer holidays—thrilling as it was—quite equalled the first sense of leisure which attends the breaking up of the Long Circuit for the 'Long Vacation.'"—*From Talfourd's Vacation Rambles.*

## NEW ORDER IN CHANCERY.

## PAYMENTS TO SURVIVING REPRESENTATIVES.

THE Right Honourable Edward Burtenshaw Lord St. Leonards, Lord High Chancellor of Great Britain, doth hereby order and direct in manner following, that is to say:—

That in any case in which the Accountant-General shall have been directed to pay to parties to be named in the Master's Report, and the Master shall have reported a sum as due to any persons as personal representatives, the Accountant-General shall be at liberty to pay to the survivors or survivor of them.

# RECENT DECISIONS IN THE SUPERIOR COURTS.

## AND SHORT NOTES OF CASES.

### Lords Justices.

*In re Dufaur, ex parte Dufaur.* June 30; July 8, 10, 1852.

**BANKRUPT. — SOLICITOR. — MONEY SCRIVENOR. — SETTING ASIDE ADJUDICATION.**

Held, that to bring a solicitor within the provisions of the Bankruptcy Law as a money scrivener, it must be shown that the general course of his business is of that nature, and it is not sufficient to prove an isolated act of scrivening to render him liable.

The adjudication was therefore set aside on appeal from Mr. Commissioner Fonblanque, but as the appellant had not tendered himself to the Commissioner for examination, it was set aside without costs.

This was a petition of appeal from the decision of Mr. Commissioner Fonblanque, adjudicating Mr. Antonine Dufaur, a bankrupt, as a scrivener. It appeared that the evidence of his acting as a scrivener rested on the testimony of two clerks, who were formerly in his service, and who stated that it was his general practice in his business to receive moneys from clients and to lay it out on securities at his discretion. They also proved that he had received moneys from Mrs. Browne, who was a wife of a former, and sister of a subsequent, partner, and that she was in the habit of coming to him for advice as to the mode of investing her property, and of paying him money for the purpose of investment. It appeared, however, that in these instances the investment was previously arranged, and that he had only charged costs as an attorney.

*Swanston and Bagshawe* in support; *Bacon and Cooke*, contra.

The Lords Justices said, that the evidence of the two clerks, if it could be relied upon, was general and not specific, and that this Court was not at liberty to rely on general allegations unsupported by specific facts or instances. As to the case of Mrs. Browne, the circumstances were peculiar, she was the wife of a former, and sister of a subsequent, partner. It was not sufficient to support a commission to show an isolated act of scrivening, but it must be shown that the general practice of his business was of that nature, and it was not to be forgotten that he had only charged Mrs. Browne his costs as an attorney, and no remuneration by procuration fees, commission, or otherwise. As, however, Mr. Dufaur had not tendered himself for re-examination before the Commissioner, the adjudication must be dissolved without costs.

August 4.—*Child v. Elworth*—Appeal allowed from Vice-Chancellor Turner.

— 4.—*Plowden v. Hyde*—Appeal allowed from Vice-Chancellor Kindersley.

Aug. 4.—*In re Briggs*—Reference to the Master in Lunacy as to whether it was for the benefit of lunatic for committee to carry on his business.

— 4.—*In re Duchess of Norfolk, deceased*—Stand over.

— 4.—*In re Stracey*—Petition affecting fund paid into Court during cause directed to be entitled in the cause as well as in the lunacy.

— 4.—*Halliday v. Coward*—Vesting order on application of heir-at-law, without reference to the Master.

— 5.—*Nelson v. Straugham*—Order for the conveyance and transfer to official manager of estate of deceased contributory.

— 5.—*In re Birmingham, Oxford, Reading, and Brighton Railway Company, ex parte Thorne*—Order for removal of name from list of contributories,—costs to be paid out of the estate.

— 5.—*In re Same, ex parte Onion*—The like.

— 5.—*In re Same, ex parte Upfill*—Order for discharge of order for a call.

— 6.—*In re Harvey's Charities*—Order confirming Master's report.

— 6.—*Attorney-General v. Sheffield Gas Consumers' Company; Sheffield United Gaslight Company v. Same*—Appeal dismissed from Vice-Chancellor Turner.

### Master of the Rolls.

Aug. 4.—*Attorney-General v. University of Cambridge*—Order approving of arrangement herein.

— 4.—*Swinbourne v. Nelson and others*—Injunction granted on undertaking.

— 5.—*Lowton v. Swettenham*—Power to raise charge held not able to be raised during lifetime of tenant for life.

— 5.—*Barklett v. Patten*—Order for issue of commission to examine witnesses at Sydney.

— 5.—*Collett v. Preston*—Petition dismissed.

— 5.—*Ex parte Robinson and another*—Order for taxation of bills of costs.

— 5.—*Brassey v. Chalmers*—Cur. ad. vult.

### Vice-Chancellor Turner.

Aug. 6.—*Eddleston v. Collins*—Judgment herein.

— 6.—*In re Vanden's Charity*—Order confirming charity scheme.

### Vice-Chancellor Kindersley.

*Groves v. Lane.* June 30, 1852.

**CREDITOR'S CLAIM.—MORTGAGEE.—STATEMENT OF DEBT.—ADMINISTRATION PENDENTE LITE.—AMENDMENT.**

An objection was allowed to a creditor's claim, filed by a mortgagee, of the debt not having been specifically stated, and held, where it

is intended to ask particular relief by claim, that the ground work of such relief must be set out.

Held also, that an administration pendente lite, which had been obtained, was not sufficient, inasmuch as other debts might have to be got in.

But leave was given to amend the claim, in preference to its dismissal without prejudice to file a new one.

J. Russell and F. G. White appeared in support of this creditor's claim which was filed by a mortgagee.

Cole, Bowring, J. F. Prior, and Webster, contra, on the grounds that the plaintiff's debt was not specifically stated, and that the administration pendente lite, which had been obtained by the plaintiff, was insufficient.

The Vice-Chancellor said, that although a legal mortgagee was entitled to sue as a creditor, yet there should be a specific statement of his debt, and not merely by implication. It was true claims were intended to render proceedings more simple and concise, but not to omit, where particular relief were asked, the ground-work for that relief, and the objection could have been taken by demurrer, if this had been a bill. The administration which had been taken out, was also insufficient, as other debts might have to be got in. The claim would, therefore, have to be amended, in preference to its being dismissed without prejudice to filing a new one.

Aug. 4.—*Vernon v. Vernon*—Order on petition for increased allowance to infant for outfit.

—4.—*In re Alsager's Charities*—Petition refused to confirm contract for conversion of school-house into parsonage.

—4.—*Attorney-General v. Earl of Devon*—Order approving of variations in scheme settled by Master.

—5.—*Coventry v. Lygon*—Order on petition as to custody of infant ward.

—5.—*Birch v. Mills*—Injunction granted to restrain obstructing works of colliery.

—5.—*Hawkins v. Gathercole*—Order as to payment by receiver under sequestration of salary for performance of duty of benefice.

#### Vice-Chancellor Parker.

*Lyon v. Baker.* June 30, 1852.

TRUSTEE.—SOLICITOR.—ACTING IN DEFENCE OF SUIT BY HIS PARTNER.—COSTS.

The Court refused to direct the taxation and payment of the ordinary costs of a trustee-solicitor, who had employed his partner in his defence to a suit brought against him alone by his co-trustee, or to direct an inquiry to the Master, whether his defence by his partner instead of by a stranger, was of advantage to the parties, although it was suggested his personal interference in the suit was most advantageous, in shortening its duration and diminishing the costs.

It appeared in this case that the defendant, Mr. Baker, who acted as trustee under the will of Mr. Lyon, had employed his partner in his defence to the suit, which was instituted by his co-trustee. On the taxation of the costs directed at the hearing to be taxed as between solicitor and client, the Master had refused to allow Mr. Baker more than his costs out of pocket.

*Chandless and Hardy* for the plaintiff; *Wigram and Small* for the defendant, asked for a special direction, that the ordinary costs should be taxed and paid, or for a reference to the Master, whether Mr. Baker having been defended by his partner instead of by a stranger, had been advantageous to the parties, and urged, that his personal interference in the suit had been of advantage, in shortening its duration and diminishing the costs, citing *Lincoln v. Windsor*, 9 Hare, 158.

*Russell and Cooper* for other parties.

The Vice-Chancellor said, the rule was clearly settled, that a trustee acting as a solicitor for himself or by his partner, should not be allowed more than his costs out of pocket; and the rule had only been relaxed where he acted in a suit for himself and others, and the reference must therefore be refused.

Aug. 4.—*In re Bedford Charity*—Order confirming Master's report as to scheme.

—4.—*Torrington v. Bowman*—Judgment on special case under 13 & 14 Vict. c. 35.

—4.—*Johnson v. Hall*—Injunction granted.

—5.—*Court v. Clarke*—Judgment on special case.

—5.—*Farina v. Grossmith*—Injunction granted.

—5.—*Francis v. Francis*—Judgment on special case.

—6.—*In re Wadebridge Company*—Reference to the Master.

—6.—*In re Middlesex Pauper Lunatic Asylum, ex parte Committee of Visitors of Additional Lunatic Asylum for Middlesex*—Order on petition for application of part of annual income for benefit of patients residing in the additional asylum.

#### Court of Queen's Bench.

*Regina v. Temple.* June 9, 1852.

FOOR-RATE.—LIABILITY OF NORMAL SCHOOL TO BE RATED.—TRUSTEE.—OCCUPIER.

A building was occupied by the principal and his family, and the remainder by the pupils and servants, and was bought by public money for the purposes of education, and under a declaration of trust that the premises were held in trust for such purposes as the Committee of Council on Education should from time to time direct, and was used as the normal school for the training of schoolmasters: Quere, whether it was liable to be rated to the poor.

But the case was directed to be sent back for the introduction of the name of the trustee

*as occupier, and to find whether the rooms occupied by the principal were more than necessary for his use in discharging his duties.*

THIS was a special case for the opinion of the Court whether the principal of the Kneller Hall Establishment was liable to be rated to the relief of the poor. It appeared that the building was bought by public money for the purposes of education, and was held in trust for such purposes as the Committee of Council on Education should from time to time direct, and was used as the normal school for the training of schoolmasters,—a portion of the building consisting of seven rooms being occupied by the appellant and his family, and the remainder by the pupils and servants.

The *Attorney-General*, *Bodkin*, and *Ballantine* in support of the appeal; *Hugh Hill*, *Q. C.*, and *Huddleston*, contra.

The Court said, the case must be referred back to introduce the name of the trustee as occupier, and for the determination of the question, whether the rooms occupied by the appellant were or were not more than sufficient for his use to enable him to discharge his duties.

#### Common Pleas.

*Dalby v. India and London Life Insurance Company.* May 27, 1852.

CROSS POLICY OF INSURANCE.—SURRENDER OF ORIGINAL POLICY.—INSURABLE INTEREST.

*Quære, whether the secretary of an insurance company can maintain, as having an insurable interest under the 14 Geo. 3, c. 48, an action on a policy of insurance, which was effected with the defendants, as a cross insurance against a policy with them, where the original policy had been surrendered, in consideration of an annuity to the insurer and his wife.*

*Quære also, whether the decision of Godsall v. Boldero, 2 Smith's Lead. Ca. 157; 9 East, 72, is good law.*

THIS was a rule nisi obtained on Feb. 9 last, to set aside the verdict for the plaintiff, and to enter a nonsuit or a verdict for the defendants, in this action, which was on a policy of insurance effected on the life of the late Duke of Cambridge, with the defendants, by the plaintiff, as secretary of the Anchor Life Insurance Company. It appeared that in 1843, the Rev. Mr. Wright insured the life of the Duke for 300*l.*, with the plaintiff's company, and that the plaintiff, in order to lessen the risk, effected the policy sued on. Mr. Wright, in 1848, surrendered his policy to the plaintiff's company, in consideration of an annuity to himself and his wife, but the policy with defendants was kept up. At the trial before *Cresswell, J.*, at the sittings after last Michaelmas Term, the plaintiff obtained a verdict, subject to this rule.

*Bramwell, Q. C.*, and *Smith*, for the plaintiff, showed cause against the rule, which was supported by *Channell, S. L.*, *Partridge*, and *Cox-*

*on*, for the defendants, referring to the 14 Geo. 3, c. 48, and *Godsall v. Boldero*, 2 Smith's Lead. Ca. 157; 9 East, 72.

The Court, upon the consent of counsel, enlarged the rule, in order to tender a bill of exceptions to the ruling at the trial, and take the opinion of the Court of Error upon the question.

#### Court of Eschequer.

*Cooke v. Batty.* June 11, 1852.

ACTION FOR DAMAGES FOR INJURY FROM A HORSE.—DECLARATION.—FAILURE OF PROOF OF SCIENTER.—QUESTION AS TO PROPRIETY OF ARRANGEMENTS AT ESTABLISHMENT.

*The declaration in an action to recover damages for injury sustained by the plaintiff from the defendant's horse kicking him while witnessing an equestrian performance at his establishment, alleged that the defendant was possessed of a horse of a vicious nature and accustomed to kick, and that the defendant knowing the premises, exhibited it in certain feats of horsemanship at his establishment, without having made due and proper arrangements in that behalf: Held, that the declaration disclosed two causes of action, and that on the failure of proof that the defendant had knowingly exhibited a vicious horse, there remained a good cause of action for his not having made proper arrangements; but a new trial was ordered on payment of costs, the judge being dissatisfied with the verdict.*

THIS was an action brought to recover damages sustained by the plaintiff while witnessing the performances at the Hippodrome conducted by the defendant. The declaration alleged that the defendant was possessed of a horse of a vicious nature and accustomed to kick, and that the defendant knowing the premises exhibited it in certain feats of horsemanship at his establishment without having made due and proper arrangements in that behalf. On the trial before *Martin, B.*, at the Sittings in Easter Term last, the allegation that the horse was vicious or accustomed to kick was not proved, but the learned Baron held there remained a sufficient statement of a cause of action, and left to the jury the question, whether the defendant had made due and proper arrangements for the exhibition generally; and upon the plaintiff obtaining a verdict with 20*l.* damages, this rule had been obtained to enter a nonsuit or for a new trial.

*E. James* and *Wordsworth* showed cause; *Shee, S. L.*, and *Hodgson* in support.

The Court held, that the declaration disclosed two causes of action: one for knowingly exhibiting a vicious horse, and the other for not having made the proper arrangements for the exhibition generally, and refused the rule for a nonsuit, but said that as the learned Judge was dissatisfied with the verdict, there might be a new trial on payment of costs.



## ANALYTICAL DIGEST OF CASES,

REPORTED IN ALL THE COURTS.

## Courts of Equity.

[For the previous Sections of the Digest in this Volume, see

*Privy Council* : Appeals, p. 17.

*House of Lords* : Appeals, p. 38.

## Courts of Equity :

Law of Attorneys and Solicitors, p. 125.

Contributories under the Winding-up Act, p. 143.

Law of Trustees, p. 165.

Lunacy, p. 185.

Law relating to Infants, p. 186.

Law relating to Charities, p. 203.

Appeals in Bankruptcy, p. 225.

Construction of Statutes, pp. 104, 286.]

## CONSTRUCTION OF STATUTES.

## WINDING-UP ACTS.

1. Winding-up order refused, on the ground (amongst others) that a suit was pending for the same purpose. *In re Chester and Manchester Direct Railway Company, ex parte Philipps*, 1 Sim. N. S. 605.

2. A petition to discharge a winding-up order, dismissed with costs, on account of delay in presenting it. *In re Chepstow, Gloucester and Forest of Dean Railway Company, ex parte Mann*, 2 Sim. N. S. 11.

3. *Liability of the members of a joint-stock company.*—The members of a completely formed joint-stock company are not liable for the expenses incurred in attempting to form the company, unless they have made themselves liable, either expressly or impliedly, after the complete formation of the company. Therefore, where the charges in a solicitor's bill, for business done, for the company, before its complete formation, could not be distinguished from the charges for business done subsequently, the Court held, that the Master charged with the winding up of the company, had rightly allowed the bill only as a claim, with liberty to the solicitor to bring such action as he might be advised. *In re Independent Assurance Company, ex parte Terrell*, 2 Sim. N. S. 126.

4. *Re-hearing of appeal not limited to 21 days.*—The provisions of the Winding-up Acts, 1848 and 1849, limiting the presentation of an appeal to the Lord Chancellor to 21 days, do not apply to the case of the re-hearing of such an appeal. *In re Direct Exeter, Plymouth, and Devonport Railway Company, ex parte Besley*, 3 M'N. & G. 287.

5. 1849.—*Company where no shares allotted.*—Whether an association or company, which had not proceeded to such a stage as to render any party bound to take shares, and where no

shares were in fact allotted, is an association or company within the meaning of the Act 12 & 13 Vict. c. 108, *quære*. *In re Direct Exeter, Plymouth, and Devonport Railway Company, ex parte Besley*, 3 M'N. & G. 287.

6. *Order stayed on the petition of the directors on terms.*—On order had been made to wind up a company, but no person had been placed on the list of contributories, and no creditor had made any claim. On the application of directors (who were the holders of 6,490 out of 7,325 shares), the consent of the official manager and the original petitioners, and evidence that the remaining shares could not be heard of, and that the petitioners had paid, in respect of liabilities of the company, more than the amount of the assets in the hands of the official manager, the Court ordered that amount to be paid to the petitioners, on their undertaking to account for it, and stayed all proceedings under the winding-up order. *In re Worcester, Tenbury, and Ludlow Railway Company*, 3 De G. & S. 189.

7. *Affidavit of notice of application to wind up company.*—The affidavit of service of a petition to wind up a company under the Winding-up Acts, must state or show that the person on whom it has been served is a member, officer, or servant of the company; and it is not sufficient to state that he is a member of the provisional committee. *In re London and Dublin Approximation Railway Company*, 3 De G. & S. 208.

8. *Preliminary inquiry directed.*—Upon a petition to wind up a company under the Winding-up Acts, a preliminary inquiry was directed as to the expediency of making the order, although the petition was unopposed. *In re Great Eastern and Western Railway Company*, 3 De G. & S. 218.

9. *Improper case for order.*—*Costs.*—Where, upon a petition for an order under the Winding-up Act, it did not appear that there existed any debt or liability of the company, or that the petitioner had sustained or was likely to sustain any loss in respect of any debt of the company, and no assets were shown to exist, except such as might arise by compelling the directors to make good monies expended by them in purchasing shares to enhance the price of them in the market: Held, not a proper case for an order. And the transactions complained of having occurred five years before the presentation of the petition, and having been the subject of an investigation and a suit instituted four years previously, and compromised, and also of another petition which had been abandoned on a compromise, the new petition was dismissed with costs. *Ex parte Loderwick, in re Great Munster Railway Company*, 3 De G. & S. 231.

10. *Prosecution of order on death of peti-*

tioner, ordered on motion *ex parte*.—Where a winding-up order had been obtained by a petitioner who abandoned it upon a compromise with the directors, before carrying it into the Master's office, the Court gave the prosecution of the order to a second petitioner; and on the death of such second petitioner before he had taken any further step in the matter, the Court, upon an *ex parte* motion, gave the carriage of the order to another shareholder. *In re Iarne, Belfast, and Ballymena Railway Company, ex parte Baker*, 3 De G. & S. 242.

11. *Order not made if inexpedient*.—The Court will not interfere under the Winding-up Acts, where there are judicial grounds for holding it not expedient to do so. A joint-stock banking company, established in India, having correspondents and liabilities in this country, suspended payment in India, and proceedings had been taken there by arrangement between certain shareholders in the company and some of the creditors, in pursuance of which others of the shareholders were sued, who refused to contribute to the payment of the debts according to an assessment unequally made. A shareholder who was thus sued petitioned to have the affairs of the company wound up under the Winding-up Acts; but the Court, presuming on the whole against the expediency of its interfering, declined to make the order, leaving those concerned to their ordinary remedies. *In re Union Bank of Calcutta, ex parte Watson*, 3 De G. & S. 253.

12. *Petition to wind up company*.—Reference to Master as to the existence of company.—Where the circumstances of the case rendered it doubtful whether there ever had been such a company as that sought to be wound up, the Court referred it to the Master to inquire whether the alleged company ever existed; and if it had existed, whether it was proper that it should be wound up. *In re North Western Trunk Railway Company*, 3 De G. & S. 266.

13. *Right of contributories to attend all proceedings before Master*.—In winding up the affairs of a joint-stock company under the Winding-up Acts, the Master made an order that the official manager should attend him privately, for the purpose of fixing a reserved bidding upon a sale of the works of the company, without giving notice to any of the contributories. Upon a motion to discharge or vary that order, *held*, that all contributories were entitled to attend all proceedings before the Master; and the order was discharged. *In re Imperial Salt and Alkali Company, ex parte Slatter*, 5 De G. & S. 34.

14. *What company within the Acts*.—A railway company had been provisionally registered, and shares had been allotted in it, on which small deposits had been paid, but no deed of settlement or parliamentary contract was executed, and the scheme became abortive. In June, 1849, the usual order was made to wind up the company, on the petition of one of the members of the committee of management.

The proceedings under the order were carried on actively, and, after much litigation, the number of persons remaining on the list of contributories were reduced to seven, one of whom, being out of the jurisdiction, was not finally fixed as a contributory. In May, 1851, three of the seven contributories presented a petition for the discharge of the order, or for a stay of all proceedings under it: *Held*, that the company was within the Winding-up Act, 1848; and the petition was dismissed with costs. *In re Direct Exeter, Plymouth, and Devonport Railway Company, ex parte Woolmer*, 3 De G. & S. 117.

15. *Calls on contributories generally and for costs only*.—By the subscription contract of a provisionally registered railway company, giving the usual powers to the committee of management, the persons who were parties to the agreement of the third part covenanted, that, in the event of the application to Parliament being unsuccessful, they would pay and discharge all the costs and expenses which should have been incurred, with a view to the promotion of the undertaking, and all other costs and charges of every description incidental thereto, such costs and charges to be assessed rateably on the sums described by them respectively. On winding up the company under the Winding-up Acts, it was alleged on behalf of some of the contributories, that the managing committee had received, by means of the deposits, much more than sufficient for the payment of all necessary costs, charges, and expenses of every description, and had misapplied considerable sums; but it did not appear that proceedings to enforce the alleged liabilities of the members of the committee would be attended with any immediate beneficial result: *Held*, that, until some proceedings had been taken before the Master, to ascertain and enforce these liabilities, a call ought not to have been made on the contributories generally, for payment of the debts proved against the company, and of the costs incurred by the official manager in the prosecution of a suit, and in the defence of an action under the sanction of the Master, and generally, under the winding-up order.

Proceedings for the above purpose were consequently commenced before the Master. While they were in the course of prosecution, a call was made by him on the contributories generally, to provide a fund for payment of the above costs merely: *Held*, that the call had been properly made. *In re London and Birmingham Extension, and Northampton, Daventry, Leamington, and Warwick Railway Company, ex parte Gay*, 5 De G. & S. 122.

16. *Provisional committee-man*.—*Allotment and acceptance of shares*.—*Upfill's case*.—A member of a provisional committee of an abortive railway company wrote, in answer to an inquiry by the secretary what shares he proposed to take, thus:—"I have made application for 50 shares, and as a member of the provisional committee, I shall be obliged if

you will allot them to me." It did not appear that any shares were in fact allotted to him: *Held*, distinguishing this case from *Upfill's case* (2 H. of L. Cas. 674), that the name of the member of the provisional committee had been properly struck out of the list of contributories. *In re Brighton, Lewes, and Tunbridge Wells Direct Railway Company, ex parte Conway*, 5 De G. & S. 150.

17. *Contributory*.—*Provisional committee-man*.—*T.*, a member of a provisional committee of an abortive railway scheme, attended a meeting of that committee, at which a committee of management was appointed, who incurred debts which the funds of the company were insufficient to pay. At a subsequent meeting of the provisional committee, at which *T.* attended, the committee of management reported, that they had incurred such debts; and that, according to an opinion taken, all the members of the provisional committee were liable for the debts so incurred: when resolutions were passed adopting the report, and arranging, by a rateable contribution, for payment of the debts. *T.* was at such meetings appointed a member of a finance committee to arrange for the payment of the debts of the company, and was active in such committee, and he contributed several sums towards liquidating the debts. The Master, in winding up the affairs of the company under the Winding-up Acts, placed *T.*'s name on the list of contributories: *Held*, that *T.* was not a contributory.

*Held*, also, that the committee of management was a body of persons acting for themselves independently, and not as agents for or on behalf of the provisional committee; and that the committee of management was the committee of the intended company, and not of the provisional committee. *In re Direct Exeter, Plymouth, and Devonport Railway Company, ex parte Tanner*, 5 De G. & S. 182.

Case cited in the judgment: *Ex parte Bealey*, 3 M'N. & G. 309.

18. *Insolvent company*.—*Temporary difficulties*.—Where a company is insolvent, and has been getting worse, it is no answer to an application to wind it up to say, that the difficulties are temporary, and that there is hope of more prosperous times. *In re Norwich Yarn Company*, 12 Beav. 366.

19. *Staying proceedings in a suit*.—Pending a suit by the shareholders against the directors of a joint-stock company, one of the defendants obtained an order under the 11 & 12 Vict. c. 45, for winding up the affairs of the company. Some time afterwards, the plaintiffs moved that all further proceedings in the suit might be stayed, until the affairs of the company had been wound up under the order.

The Court refused the motion with costs. *Deeks v. Stanhope; Deeks v. Bebb*, 1 Sim. N. S. 439.

20. *Costs of appeal*.—*Discretion of Court*.—The general rule of practice of the Court of

Chancery, by which a successful appellant is not allowed the costs of his appeal, does not apply to proceedings under the Winding-up Acts, but the costs of all the proceedings are in the discretion of the Court. *In re North of England Joint-Stock Banking Company, ex parte Hall*, 1 De G., M'N. & G. 1.

21. *Payment of costs by official manager to successful appellant*.—In a case where the official manager succeeded before the Master, on appeal before the Vice-Chancellor, in obtaining the name of a party to be included in the list of contributories; but these decisions were ultimately reversed by the Lord Chancellor, the costs of all the proceedings, including the costs of the appeals, and in the Master's office, were ordered to be paid by the official manager to the party sought to be charged. *In re North of England Joint-Stock Banking Company, ex parte Hall*, 1 De G. M'N. & G. 1.

22. *Right of contributory to attend proceedings*.—A contributory to a joint-stock company had required, under the 37th sect. of the Joint-Stock Companies' Winding-up Act, 1848, to have notice of all proceedings before the Master in the matter of the company. The official manager being about to submit to the Master proposals for the sale of the works of the company, and for a reserved bidding, it was stated that the solicitor who had attended for the contributory was the solicitor of persons desiring to purchase the works, and might, if he were allowed to attend, make use of the information which he would thereby acquire to the prejudice of the estate: *Held*, that the Master was not justified in ordering that the official manager should attend him in private, on the matter of the reserved bidding. *In re Imperial Salt and Alkali Company, ex parte Slatier*, 1 De G., M'N. & G. 64.

23. *Joint-stock company*.—*Powers of committee*.—Previously to the passing of the Winding-up Act, 1848, a joint-stock company was dissolved under provisions contained for that purpose in the deed of settlement of the company, and a committee was appointed for winding up its affairs. Finding it impossible to do this in the then existing state of the law, the committee incurred a considerable bill of costs, in attempting, through their solicitor, to get the public Acts of Parliament, which at that time were being brought forward, made applicable to the case of the company, and finally in urging forward the passing of the Winding-up Act itself. On the passing of that Act an order was obtained for winding up the company. The committee then claimed to be paid out of the assets of the company the amount of their solicitor's bill of costs, but this claim was disallowed, on the ground that the matters in respect of which the costs were incurred were beyond the power of the committee. *In re St. George Steam Packet Company, ex parte Cropper*, 1 De G., M'N. & G. 147.

# The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

SATURDAY, AUGUST 21, 1852.

## RELATION BETWEEN THE BAR AND ATTORNEYS.

### LAW AMENDMENT SOCIETY'S REPORT.

THE importance of the Law Amendment Society and its influence on the Legislature and the public have become, in the phrase of the day, "a great fact." It is to be lamented, however, that a Society so constituted should be sometimes found to countenance, by its suggestions, schemes, the fulfilment of which are not generally felt to be particularly well calculated to elevate the character of the Legal Profession or to preserve it in its integrity.

In the annual report of the Council of the Society lately published in the columns of the daily newspapers, we find the subject of the relations between the Bar, Attorneys, and Clients, adverted to, amongst those which occupied an important share of the attention of the Society during the past year. The question, it seems, was brought under the notice of the Society by a report which, it is said, received "much consideration," and as to which the following resolutions were eventually adopted:—

"That any practice which has a tendency to prevent the public from obtaining the assistance of counsel, except through the compulsory intervention of an attorney, should be discontinued.

"That so much of the 91st section of the Act, 9 & 10 Vict. c. 95, as prevents a barrister from advocating the causes of suitors in the County Courts, unless instructed by an attorney, should be repealed."

The important considerations involved in those resolutions, are alluded to in the following paragraph of the report:—

"The latter resolution has now been adopted by both Houses of Parliament, which by a Bill of this Session for extending the jurisdiction of

the County Courts, has repealed this clause of the former Act. *It will be for the Bar to consider, whether it will act on the first of the above resolutions, which it has power to do if it should see fit, and should the occasion require it."*

It will be observed, that the sentence last cited does not contain any actual recommendation, that the Bar should act upon the principle embodied in the first resolution, and afford their "services" to clients without the intervention of an attorney. The suggestion is more mischievous, because it does not assume the shape of a direct recommendation. If the members of the Junior Bar were to be explicitly advised, that they should henceforth trample under foot the established etiquette of the Profession, and endeavour to unite the hitherto distinct functions of Counsel and Attorney, besides being ingenuous and straightforward, the recommendation could not fail to be accompanied with some explanation as to the conditions under which it should be adopted, the considerations under which it was offered, and the consequences expected to follow from it. But here it is announced that the Society, by a formal resolution determined that the practice of Counsel requiring the intervention of an Attorney should be discontinued; and then the Bar is reminded, that it has power to act upon this resolution *if it will!* Did the Council of the Law Amendment Society, when they sanctioned the Report presented in their name, desire that the Bar should act upon the resolution previously agreed to, and by so doing set at defiance the wishes, and falsify the predictions of those members of the House of Peers who advocated the repeal of the 91st section of the County Courts Act? The passage cited from the report is vague and undecided, but it justifies the suspicion that those who penned it were willing to encourage the Junior Bar to in-

vade the province of the Attorneys, whilst they were also anxious to avoid the responsibility of advising a course of proceeding so much at variance with the avowed sentiments of the acknowledged heads of the Profession—in short—that they were willing to wound and yet afraid to strike the blow!

No one can doubt how the passage will be understood by those who are impatient to unite in their own persons the functions of Barrister and Attorney. The extracts published in our last Number (p. 271), from the *Law Review*, a work which ably and faithfully represents the opinions and promotes the views of the Law Amendment Society, indicate unmistakably the uses which a portion of the Bar are disposed to make of the concession granted by the Legislature, upon the distinct understanding that it was *not to be made the pretext for any departure from the established usage of the Profession.*

No apology can be necessary for bringing this topic prominently and repeatedly before our readers. The honour and character of the Profession will be better consulted by preventing irregularities than by condemning or even correcting them after they have been committed. It is at the outset—before an unseemly rivalry has commenced between the Junior Bar and the Attorneys—that it is desirable to obtain the opinion of all branches of the Profession upon the propriety and expediency of a course clearly contemplated by some of its members. So far as it can be ascertained, it is understood to be the private opinion of nearly every man of standing and position in the Profession, that the interests of the Junior Bar and of the Attorneys—and what is still more important, the interests of the Public—will be best promoted by Barristers and Attorneys continuing to confine themselves strictly to their legitimate and distinct province. All that is required is an explicit declaration of that opinion so that it may be universally understood. It is matter for regret that the report of the Law Amendment Society

has been framed in terms so equivocal as to admit of being cited as an authority on the opposite side.

## NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

### INCLOSURE OF LANDS.

15 VICT. c. 2.

An Act to authorise the Inclosure of certain Lands, in pursuance of the Seventh Annual and also of a Special Report of the Inclosure Commissioners for England and Wales.

[20th April, 1852.]

Whereas the Inclosure Commissioners for England and Wales have, in pursuance of the Act passed in the Session of Parliament holden in the 8 & 9 Vict. c. 118, issued provisional orders for and concerning the several proposed inclosures mentioned in the first Schedule to this Act, and have, in the Seventh Annual General Report of their proceedings, certified their opinion that such inclosures would be expedient; but the same cannot be proceeded with without the authority of Parliament: And whereas, before the date of the said Annual General Report, the said Inclosure Commissioners issued their provisional order for and concerning the proposed inclosure mentioned in the second Schedule to this Act, and the requisite consents thereto had been given, but the said Commissioners had not received information of such consents having been so given at the time of making their said report: And whereas the said Commissioners have, by a special report, certified their opinion that such last-mentioned proposed inclosure would be expedient; but the same cannot be proceeded with without such authority: Be it enacted,

1. That the said several proposed inclosures mentioned in the Schedules to this Act be proceeded with, and as respects the proposed inclosure mentioned in the second Schedule to this Act, in the same manner as if the expediency of such inclosure had been certified by the Commissioners in their said Annual General Report.

2. And be it enacted, That in citing this Act in other Acts of Parliament, and in legal instruments, it shall be sufficient to use the Expression "The Annual Inclosure Act, 1852."

### SCHEDULES TO WHICH THE ACT REFERS.

#### First Schedule.

| Inclosures.                                                                                                                                              | County.             | Date of Provisional Order. |
|----------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------|----------------------------|
| The Wastes of the several Manors of Magor and Redwick, Duram and Ragland, Magor and Green Moor, Salisbury and Magor-le-Green Moor, and Redwick . . . . . | Monmouth . . . . .  | 11th October, 1850.        |
| Broomsgrove and Upton Warren . . . . .                                                                                                                   | Worcester . . . . . | 24th June, 1851.           |
| Fulshaw . . . . .                                                                                                                                        | Chester . . . . .   | 17th July, 1851.           |

| Inclosures.                                                                                                                                                | County.                  | Date of Provisional Order. |
|------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------|----------------------------|
| Seal . . . . .                                                                                                                                             | Surrey . . . . .         | 24th June, 1851.           |
| Hartwith High Pasture . . . . .                                                                                                                            | York . . . . .           | 4th July, 1851.            |
| Nantglyn . . . . .                                                                                                                                         | Denbigh . . . . .        | 28th August, 1851.         |
| West End Down . . . . .                                                                                                                                    | Southampton . . . . .    | 24th September, 1851.      |
| Clewelsy . . . . .                                                                                                                                         | Salop . . . . .          | 24th June, 1851.           |
| Bettws Hills . . . . .                                                                                                                                     | Salop . . . . .          | 24th June, 1851.           |
| Winterborne Gunner . . . . .                                                                                                                               | Wilts . . . . .          | 21st November, 1851.       |
| Waunmeirws . . . . .                                                                                                                                       | Carmarthen . . . . .     | 3rd September, 1851.       |
| Trowle Common . . . . .                                                                                                                                    | Wilts . . . . .          | 23rd January, 1852.        |
| Upham . . . . .                                                                                                                                            | Southampton . . . . .    | 23rd January, 1852.        |
| Asterton . . . . .                                                                                                                                         | Salop . . . . .          | 6th December, 1851.        |
| Eachwick Common . . . . .                                                                                                                                  | Northumberland . . . . . | 23rd January, 1852.        |
| Billinge . . . . .                                                                                                                                         | Lancaster . . . . .      | 8th January, 1852.         |
| Thorpe by Water . . . . .                                                                                                                                  | Rutland . . . . .        | 21st October, 1851.        |
| The Waste of the Manor of Ruthin in the<br>Parishes of Llanfairdyffryn Clwyd, Llan-<br>elidan, Derwen, Efenechtyd, Cioacaenog,<br>and Gyffylliog . . . . . | Denbigh . . . . .        | 8th January, 1852.         |

*Second Schedule.*

| Inclosure.               | County.            | Date of Provisional Order. |
|--------------------------|--------------------|----------------------------|
| Urishay Common . . . . . | Hereford . . . . . | 4th July, 1851.            |

**PATENT LAW AMENDMENT.**

15 & 16 VICT. C. 83.

Certain persons constituted Commissioners of Patents for Inventions, three of whom may act, the Chancellor or Master of the Rolls being one; s. 1.

Seal of the Commissioners; s. 2.

Power to Commissioners to make rules and regulations, which shall be laid before Parliament. Commissioners to report annually to Parliament; s. 3.

Treasury to provide offices; s. 4.

Commissioners, with consent of the Treasury, to appoint clerks, &c.; s. 5.

Petition and declaration to be accompanied with a provisional specification; s. 6.

Every application to be referred to one of the law officers; s. 7.

The provisional specification to be referred to the law officer who, if satisfied, may give a certificate of his allowance, which shall be filed; s. 8.

Inventor may deposit, in lieu of a provisional specification, a complete specification, such deposit to confer for a limited time the like rights as letters patent; s. 9.

Letters patent granted to the first inventor not to be invalidated by protection obtained in fraud of the first inventor; s. 10.

Commissioners to cause protections to be advertised; s. 11.

Application for letters patent to be advertised, and also oppositions to the same; s. 12.

Specification and objections to be referred to law officer; s. 13.

Power to law officer to order by or to whom costs shall be paid; s. 14.

Power to law officer to cause a warrant to be made for sealing of letters patent. Chancellor to have same powers in respect to warrant, &c., as he now has. Writ of *scire facias*; s. 15.

Nothing to affect the prerogative of the Crown in granting or withholding grant of letters patent; s. 16.

Letters patent to be made subject to avoidance on nonfulfilment of certain conditions; s. 17.

Letters patent issued under the Great Seal to be valid for the whole of the United Kingdom, the Channel Islands, and the Isle of Man. Nothing to give effect to any letters patent granted in any colony; s. 18.

No letters patent to be issued after 3 months from the date of warrant; s. 19.

No letters patent (except in lieu of those lost, &c.), to be issued after expiration of protection given by this Act; s. 20.

Letters patent may be granted to personal representatives of the applicant during the term of protection, or within three months after applicant's decease; s. 21.

If letters patent be destroyed or lost, other letters patent may be issued; s. 22.

Letters patent may be dated as of the day of the application; s. 23.

Letters patent, where antedated, to be of the same validity as if sealed on the day of the date; s. 24.

Letters patent obtained in United Kingdom for patented foreign inventions not to continue in force after the expiration of the foreign patent; s. 25.

Letters patent not to prevent the use of inventions in foreign ships resorting to British ports; except ships of foreign states in whose ports British ships are prevented from using foreign inventions; s. 26.

Specifications to be filed instead of being enrolled; s. 27.

Specifications, &c., to be filed in such office as Lord Chancellor shall direct. As to filing extra copies of drawings; s. 28.

Copies of specifications to be open to inspection at office of Commissioners, and at Edinburgh and Dublin; s. 29.

Specifications and other documents to be printed and published. As to presenting copies of publications to public libraries, &c.; s. 30.

Enrolments, &c., may be removed to the office for specifications; s. 31.

Commissioners to cause indexes to be made to old specifications, &c.: such specifications, &c., may be printed and published; s. 32.

Copies of specifications, &c., as printed by Queen's printers to be evidence; s. 33.

Register of patents to be kept; s. 34.

A register of proprietors to be kept at the office for filing specifications; s. 35.

Power for more than twelve persons to have a legal interest in letters patent; s. 36.

Falsification or forgery of entries a misdemeanor; s. 37.

Entries may be expunged; s. 38.

Provisions of 5 & 6 W. 4, c. 83, and of 7 & 8 Vict. c. 69, as to disclaimers and memoranda of alterations to apply to patents under this Act. Applications for disclaimers and caveats to be at office of Commissioners; s. 39.

Provisions of 5 & 6 W. 4, c. 83, 2 & 3 Vict. c. 67, and 7 & 8 Vict. c. 69, as to confirmation and prolongation, to apply to patents under this Act; s. 40.

In actions for infringement of letters patent, particulars to be delivered and no evidence allowed not mentioned therein; s. 41.

Courts of Common Law may grant injunction, inspection, or account, in case of infringement; s. 42.

Particulars to be regarded in taxation of costs; s. 43.

Payments and stamp duties on letters patent to be as in schedule; s. 44.

Duties to be under management of Commissioners of Inland Revenue; s. 45.

All monies received to be paid to the Consolidated Fund; s. 46.

Not to prevent payment of fees to law officers in cases of opposition, &c.; s. 47.

Fees and salaries of officers; s. 48.

Sums for defraying salaries and expenses under this Act to be paid out of monies to be provided by Parliament; s. 49.

Power to Treasury to grant compensation to persons affected by this Act; s. 50.

Account of salaries, fees, and compensation allowances to be laid before Parliament; s. 51.

Not to extend to patents applied for before commencement of Act; s. 52.

As to letters patent granted before commencement of this Act for England, Scotland, or Ireland; s. 53.

Forms in schedule may be used; s. 54.

Interpretation of terms; s. 55.

Short title; s. 56.

Commencement of Act (from 1st October, 1852); s. 57.

The following are the sections of the Act:—

An Act for amending the Law for granting Patents for Inventions. [1st July, 1852.]

Whereas it is expedient to amend the law concerning letters patent for inventions: Be it enacted as follows:

1. The Lord Chancellor, the Master of the Rolls, her Majesty's Attorney-General for England, her Majesty's Solicitor-General for England, the Lord Advocate, her Majesty's Solicitor-General for Scotland, her Majesty's Attorney-General for Ireland, and her Majesty's Solicitor-General for Ireland, for the time being respectively, together with such other person or persons as may be from time to time appointed by her Majesty, as hereinafter-mentioned, shall be Commissioners of patents for inventions; and it shall be lawful for her Majesty from time to time, by warrant under her Royal Sign Manual, to appoint such other person or persons as she may think fit to be a Commissioner or Commissioners as aforesaid; and every person so appointed shall continue such Commissioner during her Majesty's pleasure; and all the powers hereby vested in the Commissioners may be exercised by any three or more of them, the Lord Chancellor or Master of the Rolls being one.

2. It shall be lawful for the Commissioners to cause a seal to be made for the purposes of this Act, and from time to time to vary such seal, and to cause to be sealed therewith all the warrants for letters patent under this Act, and all in-

struments and copies proceeding from the office of the Commissioners, and all Courts, Judges, and other persons whomsoever, shall take notice of such seal, and receive impressions thereof in evidence, in like manner as impressions of the Great Seal are received in evidence, and shall also take notice of and receive in evidence, without further proof or production of the originals, all copies or extracts, certified under the seal of the said office, of or from documents deposited in such office.

3. It shall be lawful for the Commissioners from time to time to make such rules and regulations (not inconsistent with the provisions of this Act) respecting the business of their office, and all matters and things which under the provisions herein contained are to be under their control and direction, as may appear to them necessary and expedient for the purposes of this Act; and all such rules shall be laid before both Houses of Parliament within 14 days after the making thereof, if Parliament be sitting, and if Parliament be not sitting, then within 14 days after the next meeting of Parliament; and the Commissioners shall cause a report to be laid annually before Parliament of all the proceedings under and in pursuance of this Act.

4. It shall be lawful for the Commissioners of her Majesty's Treasury to provide and appoint from time to time proper places or buildings for an office or offices for the purposes of this Act.

5. It shall be lawful for the Commissioners, with the consent of the Commissioners of the Treasury, from time to time to appoint for the purposes of this Act such clerks and officers as the Commissioners may think proper; and it shall be lawful for the Commissioners from time to time to remove any of the clerks and officers so appointed.

6. Every petition for the grant of letters patent for an invention, and the declaration required to accompany such petition, shall be left at the office of the Commissioners, and there shall be left therewith a statement in writing, hereinafter called the provisional specification, signed by or on behalf of the applicant for letters patent, describing the nature of the said invention; and the day of the delivery of every such petition, declaration, and provisional specification shall be recorded at the said office, and endorsed on such petition, declaration, and provisional specification, and a certificate thereof given to such applicant or his agent; and all such petitions, declarations, and provisional specifications shall be preserved in such manner as the Commissioners may direct, and a registry thereof and of all proceedings thereon kept at the office of the Commissioners.

7. Every application for letters patent made under this Act shall be referred by the Commissioners, according to such regulations as they may think fit to make, to one of the law officers.

8. The provisional specification shall be referred to the law officer, who shall be at liberty

to call to his aid such scientific or other person as he may think fit, and to cause to be paid to such person by the applicant such remuneration as the law officer shall appoint; and if such law officer be satisfied that the provisional specification describes the nature of the invention, he shall allow the same, and give a certificate of his allowance, and such certificate shall be filed in the office of the Commissioners, and thereupon the invention therein referred to may, during the term of six months from the date of the application for letters patent for the said invention, be used and published without prejudice to any letters patent to be granted for the same, and such protection from the consequences of use and publication is hereinafter referred to as provisional protection: Provided always, that in case the title of the invention or the provisional specification be too large or insufficient, it shall be lawful for the law officer to whom the same is referred to allow or require the same to be amended.

9. The applicant for letters patent for an invention, instead of leaving with the petition and declaration a provisional specification as aforesaid, may, if he think fit, file with the said petition and declaration an instrument in writing under his hand and seal (hereinafter called a complete specification), particularly describing and ascertaining the nature of the said invention, and in what manner the same is to be performed, which complete specification shall be mentioned in such declaration, and the day of the delivery of every such petition, declaration, and complete specification shall be recorded at the office of the Commissioners, and endorsed on such petition, declaration, and specification, and a certificate thereof given to such applicant or his agent, and thereupon, subject and without prejudice to the provisions hereinafter contained, the invention shall be protected under this Act for the term of six months from the date of the application, and the applicant shall have during such term of six months the like powers, rights, and privileges as might have been conferred upon him by letters patent for such invention, issued under this Act, and duly sealed as of the day of the date of such application; and during the continuance of such powers, rights, and privileges under this provisions, such invention may be used and published without prejudice to any letters patent to be granted for the same; and where letters patent are granted in respect of such invention, then in lieu of a condition for making void such letters patent in case such invention be not described and ascertained by a subsequent specification, such letters patent shall be conditioned to become void if such complete specification, filed as aforesaid, does not particularly describe and ascertain the nature of the said invention, and in what manner the same is to be performed; and a copy of every such complete specification shall be open to the inspection of the public, as hereinafter provided, from the time of depositing the same, subject to such regulation as the Commissioners may make.



10. In case of any application for letters patent for any invention, and the obtaining upon such application of provisional protection for such invention, or of protection for the same, by reason of the deposit of a complete specification as aforesaid in fraud of the true and first inventor, any letters patent granted to the true and first inventor of such invention shall not be invalidated by reason of such application, or of such provisional or other protection as aforesaid, or of any use or publication of the invention subsequent to such application, and before the expiration of the term of such provisional or other protection.

11. Where any invention is provisionally protected under this Act, or protected by reason of the deposit of such complete specification as aforesaid, the Commissioners shall cause such provisional protection or such other protection as aforesaid to be advertised in such manner as they may see fit.

12. The applicant for letters patent, so soon as he may think fit after the invention shall have been provisionally protected under this Act, or where a complete specification has been deposited with his petition and declaration, then so soon as he may think fit after such deposit, may give notice at the office of the Commissioners of his intention of proceeding with his application for letters patent for the said invention, and thereupon the said Commissioners shall cause his said application to be advertised in such manner as they may see fit; and any persons having an interest in opposing the grant of letters patent for the said invention shall be at liberty to leave particulars in writing of their objections to the said application at such place and within such time and subject to such regulations as the Commissioners may direct.

13. So soon as the time for the delivery of such objection shall have expired, the provisional specification or complete specification (as the case may be) and particulars of objection (if any) shall be referred to the law officer to whom the application has been referred.

14. It shall be lawful for the law officer to whom any application for such letters patent is referred, if he see fit, by certificate under his hand, to order by or to whom the costs of any hearing or inquiry upon any objection, or otherwise in relation to the grant of such letters patent, or in relation to the provisional (or other) protection acquired by the applicant under this Act, shall be paid, and in what manner and by whom such costs are to be ascertained; and if any costs so ordered to be paid be not paid within four days after the amount thereof shall be so ascertained, it shall be lawful for such law officer to make an order for the payment of the same, and every such order may be made a rule of one of her Majesty's Superior Courts at Westminster or Dublin, and may be recorded in the books of Council and Session in Scotland to the effect that execution may pass thereupon in common form.

15. It shall be lawful for such law officer, after such hearing, if any, as he may think fit,

to cause a warrant to be made for the sealing of letters patent for the said invention, and such warrant shall be sealed with the seal of the Commissioners, and shall set forth the tenor and effect of the letters patent thereby authorised to be granted, and such law officer shall direct the insertion in such letters patent of all such restrictions, conditions, and provisos as he may deem usual and expedient in such grants, or necessary in pursuance of the provisions of this Act; and the said warrant shall be the warrant for the making and sealing of letters patent under this Act according to the tenor of the said warrant: Provided always, that the Lord Chancellor shall and may have and exercise such powers, authority, and discretion in respect to the said warrant, and the letters patent therein directed to be made under this Act, as he now has and might now exercise with respect to the warrant for the issue under the Great Seal of Letters Patent for any invention, and with respect to the making and issuing such letters patent; and the writ of *scire facias* shall lie for the repeal of any letters patent issued under this Act, in the like cases as the same would lie for the repeal of letters patent which may now be issued under the Great Seal.

16. Provided also, That nothing herein contained shall extend to abridge or affect the prerogative of the Crown in relation to the granting or withholding the grant of any letters patent; and it shall be lawful for her Majesty, by warrant under her Royal Sign Manual, to direct such law officer to withhold such warrant as aforesaid, or that any letters patent for the issuing whereof he may have issued a warrant as aforesaid shall not issue, or to direct the insertion in any letters patent to be issued in manner herein provided of any restrictions, conditions, or provisos which her Majesty may think fit in addition to or in substitution for any restrictions, conditions, or provisos which would otherwise be inserted therein under this Act; and it shall also be lawful for her Majesty, by like warrant, to direct any complete specification which may have been filed under the provision hereinbefore contained, and in respect of the invention described in which no letters patent may have been granted, to be cancelled, and thereupon the protection obtained by the filing of such complete specification shall cease.

17. All letters patent for inventions granted under the provisions hereinbefore contained shall be made subject to the condition that the same shall be void, and that the powers and privileges thereby granted shall cease and determine, at the expiration of three years and seven years respectively from the date thereof, unless there be paid, before the expiration of the said three and seven years respectively, the sum or sums of money and stamp duties in the schedule to this Act annexed; and the payment of the said sums of money and stamp duties respectively shall be endorsed on the warrant for the said letters patent; and such officer of the Commissioners as may be ap-

pointed for this purpose shall issue under the seal of the Commissioners a certificate of such payment, and shall endorse a receipt for the same on any letters patent issued under the authority of the said warrant; and such certificate, duly stamped, shall be evidence of the payment of the several sums respectively.

18. The Commissioners, so soon after the sealing of the said warrant as required by the applicant for the letters patent, shall cause to be prepared letters patent for the invention, according to the tenor of the said warrant, and it shall be lawful for the Lord Chancellor to cause such letters patent to be sealed with the Great Seal of the United Kingdom, and such letters patent so sealed shall extend to the whole of the United Kingdom of Great Britain and Ireland, the Channel Islands, and the Isle of Man; and in case such warrant so direct, such letters patent shall be made applicable to her Majesty's colonies and plantations abroad, or such of them as may be mentioned in such warrant; and such letters patent shall be valid and effectual as to the whole of such United Kingdom, and the said islands and isle, and the said colonies or plantations, or such of them as aforesaid, and shall confer the like powers, rights, and privileges as might, in case this Act had not been passed, have been conferred by several letters patent of the like purport and effect passed under the Great Seal of the United Kingdom, under the seal appointed to be used instead of the Great Seal of Scotland, and under the Great Seal of Ireland respectively, and made applicable to England, the dominion of Wales, the town of Berwick-upon-Tweed, the Channel Islands, and Isle of Man, and the said colonies and plantations, or such of them as aforesaid, to Scotland, and to Ireland respectively, save as herein otherwise provided: Provided always, that nothing in this Act contained shall be deemed or taken to give any effect or operation to any letters patent to be granted under the authority of this Act in any colony in which such or the like letters patent would be invalid by the law in force in the same colony for the time being: Provided always, that a transcript of such letters shall, so soon after the sealing of the same and in such manner as the Commissioners shall direct, be transmitted to the director of Chancery in Scotland, and be recorded in the records of Chancery in Scotland, upon payment of such fees as the Commissioners shall appoint, in the same manner and to the same effect in all respects as letters patent passing under the seal appointed by the treaty of union to be used in place of the Great Seal of Scotland have heretofore been recorded, and extracts from the said records shall be furnished to all parties requiring the same, on payment of such fees as the Commissioners shall direct, and shall be received in evidence in all Courts in Scotland to the like effect as the letters patent themselves.

19. Provided always, That no letters patent, save as hereinafter-mentioned in the case of letters patent destroyed or lost, shall issue on any warrant granted as aforesaid, unless appli-

cation be made to seal such letters patent within three month after the date of the said warrant.

20. Provided also, That no letters patent (save letters patent issued in lieu of others destroyed or lost) shall be issued or be of any force or effect unless the same be granted during the continuance of the provisional protection under this Act, or, where a complete specification has been deposited under this Act, then unless such letters patent be granted during the continuance of the protection conferred under this Act by reason of such deposit, save that where the application to seal such letters patent has been made during the continuance of such provisional or other protection as aforesaid, and the sealing of such letters patent has been delayed by reason of a caveat or an application to the Lord Chancellor against or in relation to the sealing of such letters patent, then such letters patent may be sealed at such time as the Lord Chancellor shall direct.

21. Provided also, That where the applicant for such letters patent dies during the continuance of the provisional protection, or the protection by reason of the deposit of a complete specification (as the case may be), such letters patent may be granted to the executors or administrators of such applicant during the continuance of such provisional or other protection, or at any time within three months after the death of such applicant, notwithstanding the expiration of the term of such provisional or other protection, and the letters patent so granted shall be of the like force and effect as if they had been granted to such applicant during the continuance of such provisional or other protection.

22. Provided also, That in case any such letters patent shall be destroyed or lost, other letters patent of the like tenor and effect, and sealed and dated as of the same day, may, subject to such regulations as the Commissioners may direct, be issued under the authority of the warrant in pursuance of which the original letters patent were issued.

23. It shall be lawful (the Act of the 18 Hen. 6, c. 1, or any other Act, to the contrary notwithstanding), to cause any letters patent to be issued in pursuance of this Act to be sealed and bear date as of the day of application for the same, and in case of such letters patent for any invention provisionally registered under the "Protection of Inventions" Act, 1851," as of the day of such provisional registration, or, where the law officer to whom the application was referred, or the Lord Chancellor, thinks fit and directs, any such letters patent as aforesaid may be sealed and bear date as of the day of the sealing of such letters patent, or of any other day between the day of such application or provisional registration and the day of such sealing.

24. Any letters patent issued under this Act sealed and bearing date as of any day prior to the day of the actual sealing thereof shall be of the same force and validity as if they had been sealed on the day as of which the same are ex-

pressed to be sealed and bear date: Provided always, that save where such letters patent are granted for any invention, in respect whereof a complete specification has been deposited upon the application for the same under this Act, no proceeding, at law or in equity shall be had upon such letters patent in respect of any infringement committed before the same were actually granted.

25. Where, upon an application made after the passing of this Act, letters patent are granted in the United Kingdom for or in respect of any invention first invented in any foreign country or by the subject of any foreign power or state, and a patent or like privilege for the monopoly or exclusive use or exercise of such invention in any foreign country is there obtained before the grant of such letters patent in the United Kingdom, all rights and privileges under such letters patent shall (notwithstanding any term in such letters patent limited) cease and be void immediately upon the expiration or other determination of the term during which the patent or like privilege obtained in such foreign country shall continue in force, or where more than one such patent or like privilege is obtained abroad, immediately upon the expiration or determination of the term which shall first expire or be determined of such several patents or like privileges: Provided always, that no letters patent for or in respect of any invention for which any such patent or like privilege as aforesaid shall have been obtained in any foreign country, and which shall be granted in the said United Kingdom after the expiration of the term for which such patent or privilege was granted or was in force, shall be of any validity.

26. No letters patent for any invention (granted after the passing of this Act) shall extend to prevent the use of such invention in any foreign ship or vessel, or for the navigation of any foreign ship or vessel, which may be in any port of her Majesty's dominions, or in any of the waters within the jurisdiction of any of her Majesty's Courts, where such invention is not so used for the manufacture of any goods or commodities to be vended within or exported from her Majesty's dominions: Provided always, that this enactment shall not extend to the ships or vessels of any foreign state of which the laws authorise subjects of such foreign state, having patents or like privileges for the exclusive use or exercise of inventions within its territories, to prevent or interfere with the use of such inventions in British ships or vessels, or in or about the navigation of British ships or vessels, while in the ports of such foreign state, or in the waters within the jurisdiction of its Courts, where such inventions are not so used for the manufacture of goods or commodities to be vended within or exported from the territories of such foreign state.

27. All letters patent to be granted under this Act (save only letters patent granted after the filing of a complete specification) shall require the specification thereunder to be filed in the High Court of Chancery, instead of requir-

ing the same to be enrolled, and no enrolment shall be requisite.

28. Every specification to be filed in pursuance of the condition of any letters patent shall be filed in such office of the Court of Chancery as the Lord Chancellor shall from time to time appoint, and every provisional specification and complete specification left or filed at the office of the Commissioners on the application for any letters patent, shall forthwith after the grant of the letters patent, or if no letters patent be granted then immediately on the expiration of six months from the time of such application, be transferred to and kept in the said office appointed for filing specifications in Chancery; and in case reference is made to drawings in any specification deposited or filed under this Act, an extra copy of such drawings shall be left with such specification.

29. The Commissioners shall cause true copies of all specifications (other than provisional specifications), disclaimers, and memoranda of alterations filed under or in pursuance of this act, and of all provisional specifications after the term of the provisional protection of the invention has expired, to be open to the inspection of the public at the office of the Commissioners, and at an office in Edinburgh and Dublin respectively, at all reasonable times, subject to such regulations as the Commissioners may direct; and the Commissioners shall cause a transcript of the said letters patent to be transmitted for enrolment in the Court of Chancery, Dublin, and shall cause the same to be enrolled therein, and the transcript or exemplification thenceforward shall have the like effect to all intents and purposes as if the original letters patent had been enrolled in the Court of Chancery in Dublin, and all parties shall have all their remedies by *scire facias* or otherwise, as if the letters patent had been granted to extend to Ireland only.

[To be continued.]

## INCORPORATED LAW SOCIETY.

### ANNUAL REPORT.

[Continued from p. 279, ante.]

#### II. ANNUAL CERTIFICATE DUTY.

The last of the Parliamentary measures to which the Council would advert, is that of the proposed Repeal of the Certificate Duty.

The Members are aware that after the last General Meeting, the motion for leave to bring in the Bill to repeal the Duty was made by Lord Robert Grosvenor, before a House of 308 Members, and although strongly opposed by Government, was carried, by a majority of 30. It will be recollected that it was only in the Session of 1850, that the House of Commons was induced, for the first time, favourably to receive the application for the Repeal of the Tax. The Council, to whom the measure had been intrusted by a General Meeting of the Profession, finding it so stren-

ously resisted, proceeded to call on the Solicitors in the country to assist in promoting the object, from time to time, throughout that session, and their co-operation was most important. The advocates for the Bill obtained four divisions in its favour, and being defeated only at a late hour, on the motion for the third reading, the Council lost no time in renewing the appeal to Parliament in the last session. As a preparatory step, the Provincial Law Societies and Solicitors generally were urged to address letters to their respective representatives, with the view of inducing the Government to include the remission of the Tax in their Financial Plan.

Having ascertained, by a personal deputation to the minister, that no concession would be made, the Council then suggested the presentation of petitions and the renewal of letters to the members of the House.

Various public events prevented the bringing on of the motion for several months. It was, however, deemed very important to have the principle of the Bill affirmed, if possible, in that session, and this was effected. To carry the Bill through both Houses in that session, was indeed, in the face of a powerful opposition, impossible, and it was deemed prudent to reserve the efforts of the Profession until the present session.

Notwithstanding these repeated postponements, the Law Societies and the Profession generally have not relaxed their efforts to remove this grievance, but, on the contrary, have again used their influence with their several representatives and presented numerous petitions.

On the accession of the present Ministers to office, a memorial in support of the repeal of the duty was presented by the Council to the Chancellor of the Exchequer, and a numerous deputation attended him. In addition to the claim on principles of justice, they explained the results of recent legislation on the Profession, and the effect of the Certificate Tax on different classes of practitioners. The Chancellor of the Exchequer, after making several inquiries, assured the deputation that he would give the whole subject his careful consideration, bearing in mind the several decisions of Parliament already expressed upon the injustice of the tax, and the injurious effect of the alterations in the law on Professional emoluments, with a desire to come to a right conclusion on the merits of the case.

The financial statement was made after the Easter recess, and the remission of this tax was not included in it. Lord Robert Grosvenor, therefore, immediately gave notice of a motion to bring in the Bill, which motion he was prevented from making by a political manoeuvre directed against another measure; and the Council can only look forward and direct the hopes of their constituents to a new Parliament for the redress which has been hitherto withheld from them.

It can scarcely now be necessary to re-state the merits of the question at large, but a remark

may not inappropriately be made upon one objection which, strangely enough, has created a difficulty in the minds of some Professional men.

The continuance of the tax has been attempted to be excused on the ground that other classes are burdened with personal taxes for the privilege of exercising their callings; but the truth is that, instead of one tax, which some other classes pay, the attorneys pay no less than *three different personal taxes*.

There is, first, the 120*l.* stamp upon the article of clerkship; secondly, 25*l.* upon admission; and thirdly, the Annual Tax.

No other profession or trade is burdened with a *treble personal tax* for being allowed to exercise their calling; and moreover, no other profession is subject to a prescribed scale of charges, rigidly applied on taxation, which no special contract is allowed to modify or supersede.

The annual licences of auctioneers, bankers, pawnbrokers, &c., producing 103,937*l.*, are the only instances bearing the slightest resemblance to the Annual Certificate Tax on attorneys.

The licence taxes are charged, not on the person, but on articles liable to excise and other duties, and therefore are *paid in effect by the consumers*. And the repeal of the Certificate Tax cannot in any way affect the continuance of the revenue derived from licences. Two of the three personal taxes upon the attorney, producing upwards of 84,000*l.* per annum, will remain after the repeal of the Certificate Duty.

### III. REMOVAL OF THE COURTS FROM WESTMINSTER.

The Council having learnt that it was proposed to alter or erect rooms near Westminster Hall as temporary Courts for the sittings of the Lords Justices, the Master of the Rolls, and several of the Vice-Chancellors, presented a memorial to the Lord Chancellor, submitting to his lordship that from the want of space, such Courts would necessarily be very inconvenient, and there would be no sufficient accommodation for counsel, solicitors, or the parties interested during their attendance on the Courts, and pointing out that during the erection of the present Courts of Law and Equity at Westminster, viz; from 1824 to 1826, the Courts of Equity, then three in number, sat altogether in or near Lincoln's Inn, from the insufficiency of the temporary accommodation which could be procured at Westminster, and that now the Courts being six in number, there was much greater difficulty in providing suitable temporary accommodation, and there would be double the extent of inconvenience from insufficient accommodation.

It is well known that very great inconvenience and loss of time are occasioned to barristers and solicitors practising in the Court of Chancery by the sitting of the Judges being held at a distance from the Chambers of the

Masters, the registrars, and other offices in which the business of the Court is transacted.

The Lord Chancellor did not consider it necessary to adopt this suggestion, and the Courts have consequently been sitting during the last two Terms in inconvenient rooms but ill adapted for the administration of this important branch of Justice.

The Council also prepared a petition to the House of Commons, which was presented by Mr. Headlam, in which they set forth the substance of the evidence taken before the several Committees of the House of Commons in 1842 and 1845, showing all the inconveniences which prevail in the present Courts, and the impossibility of finding space near the Houses of Parliament to remedy the evils.

In addition to these efforts, a deputation from the Council attended Lord John Manners, the Chief Commissioner of Public Works, and submitted to his Lordship the urgent necessity of providing new buildings in the neighbourhood of the Inns of Court.

#### IV. PROFESSIONAL PRACTICE.

The Council next proceed to the statement of some occurrences during the year bearing on the practice of the Profession.

**Circuit Fees.**—Their attention was recently drawn to a regulation adopted by the Members of the Bar on the Chester Circuit, under which a barrister, not within the Bar, declined to hold a brief for the plaintiff, in a defended cause, unless another barrister were also employed with him. And as such a regulation necessarily tends evidently to inflict on the suitors an unnecessary expense in many cases, the Council felt it to be their duty to object to any departure from the old established rule, that a barrister, not within the Bar, was bound to take a brief properly tendered to him, although no other barrister were employed for the client. Accordingly, they addressed the leaders of the Circuit, and the Attorney and Solicitor-General, and the Council have been since informed that the practice has been altered.

**Retainers.**—Some disputed questions have occurred regarding the practice of retainers, and upon the solicitors agreeing to abide by the decision of the Council, they have taken the subject into consideration, and given their opinion.

**Cause Lists.**—A matter of some practical importance may next be mentioned, relating to the regulation promulgated in Michaelmas Term last, directing that lists of causes appointed for hearing in the several Courts of Equity should be given out at the rising of the Courts on the preceding day. It was obvious that this arrangement would be attended with the greatest convenience to the solicitors of the Court and their clients; but it was very imperfectly carried out, and the Council, therefore, solicited the attention of the Lord Chancellor to the subject, and they hope no further inconvenience has been sustained by any neglect on the part of the subordinate officers entrusted with the discharge of this duty.

**Legacy Duty on Solicitors' Costs.**—The Council were called upon to consider a singular claim of *Legacy Duty* made on one of the Members of the Society in respect of the costs of a solicitor, acting also as a trustee, and expressly authorised by the will to make Professional charges. The claim is founded on a very subtle construction of the Statutes imposing duties upon legacies, on the ground that, as by law a trustee cannot make any Professional charges, the authority to do so by the will confers a benefit which must be treated as a legacy.

The Council recommended that if the authorities should refuse to pass the residuary accounts unless duty were paid upon the solicitor's costs, the course for the executors to pursue would be to tender what they considered to be the proper amount of duty, and require the account to be passed. In case the Revenue Board should apply to the Court of Exchequer, it would be competent for the executors to show cause on the motion, and this would be an easy and not very expensive means of obtaining the opinion of the Court upon the question. If the decision should be in favour of the Crown, it may be proper to apply for an alteration of the Statutes.

**Conveyancing Usages.**—Several questions on the usage and practice of the Profession in conveyancing transactions have been brought before the Council, and their opinions are entered in the book kept for the use of the Members in the Secretary's office.

They have also given their attention to points of practice in dispute between solicitors, which, though not depending on any settled usage, the parties were willing to leave to the decision of the Council, and they trust that in adjusting these matters of difference, they have, while adhering to established principles, saved their brethren from unpleasant altercation, and the parties from needless expense.

[To be continued.]

#### NEW ORDER IN THE COURT OF CHANCERY.

MASTER OF REPORTS AND ENTRIES.—  
COUNTER-SIGNING CHEQUES OF ACCOUNTANT-GENERAL.

27th July, 1852.

I, the Right Honourable Edward Burtenshaw Lord St. Leonards, Lord High Chancellor of Great Britain, do hereby, in pursuance of an Act of Parliament passed in the sixteenth year of the reign of her present Majesty, intituled "An Act for the relief of the Suitors of the High Court of Chancery," and in pursuance of all other powers enabling me in that behalf, order and direct,

That the copies or extracts made in or issuing from the Office of the Master of Reports and Entries, and certificates of no cause shown, shall be signed by him alone, save that when he shall be prevented from signing the same,

by absence or some unavoidable or reasonable ground, the same shall be signed by the registrar who shall be employed in countersigning as next hereinafter mentioned.

That until further order, the duty of countersigning the notes or cheques drawn by the Accountant-General of the said Court upon the Bank of England shall be discharged as nearly as conveniently may be, during three days in each week, by the Master of Reports and Entries, and during the other three days in each week by some one of the registrars, in such order and rotation as shall be agreed upon by and between the Registrars and the Master of Reports and Entries, or the majority of them.

Provided that such notes or cheques shall be equally valid and available to all intents and purposes, whether signed by the Master of Reports, or by any one of the registrars.

(Signed) ST. LEONARDS, C.

### NOTICES OF NEW BOOKS.

*The Practice of the County Courts.* By HERBERT BROOM, Esq., of the Inner Temple, Barrister-at-Law. London: W. Maxwell. 1852. Pp. 380.

FOLLOWING immediately after the recent Act for facilitating Proceedings in the County Courts, this is a well-timed publication,—bringing down to the present period all the Statutes, Rules, and Decisions, carefully and clearly arranged for the use of the practitioner. Mr. Broom is favourably known to the Profession by his learned collection of Legal Maxims,—a work which combined in one volume the contents of various books of maxims, with the pith of the old Law Grammars and Glossaries,—thus presenting to the student one of the most useful of our works of reference.

Whatever may be the difference of opinion on the merits of the County Courts, it cannot be doubted that a knowledge of the course of proceeding and practice is essential to such members of the Profession as either voluntarily or compulsorily resort to them. It is indeed not improbable that the attorneys who have now a statutory right to be heard, without the favour of the Judge, will more generally attend than they have hitherto done, and fully prepare themselves to conduct their cases in Court with due effect.

The materials from which the practice, as the author observes, must be composed,—First, of the Statutes specially relating thereto; 2ndly, the Rules of Practice and Forms framed in pursuance of the 12th section of the 12 & 13 Vict. c. 101; and 3rdly, the various decisions upon specific

cases, originating in the County Courts, and subsequently brought before the Courts at Westminster, on appeal or otherwise. The Statutes which relate to the County Courts are the 9 & 10 Vict. c. 95, by which those Courts were originally constituted and their jurisdiction defined; the 12 & 13 Vict. c. 101; the 13 & 14 Vict. c. 61, by which the jurisdiction of the Courts in question was extended to 50*l.*, a right of appeal given in certain cases to the suitor, and other important changes effected; and the 15 & 16 Vict. c. 54, passed in the last Session of Parliament, which contains the important clause as to the mode of appearance in the County Court; and provisions relative to the manner of effecting execution in a district out of the jurisdiction of the Court in which the preliminary steps in the cause were taken.

On this latter clause (15 & 16 Vict. c. 54, s. 5), Mr. Broom remarks, that “as it originally stood in the Bill, printed by order of the House of Commons, as amended in Committee, and on re-commitment, it provided, that where a warrant of execution should have issued, or an order of commitment have been made against a person out of the jurisdiction of the Court, it should be lawful for the clerk of any Foreign Court, within the jurisdiction whereof the defendant actually might be, after sealing and stamping the warrant or order in pursuance of the 9 & 10 Vict. c. 95, s. 104, ‘to re-issue the said warrant or order to the high bailiff of the Court from whence the same originally issued.’ The clause, as thus worded, was of course perfectly intelligible, its object being to enable the bailiff of the Home Court to execute process against a defendant out of the jurisdiction, on having the warrant stamped by the clerk of the Foreign Court, this mode of proceeding being much more simple and efficacious than that prescribed in the 9 & 10 Vict. c. 95, and explained in the body of this work. Unfortunately, however, the language originally used in the bill, as above mentioned, was afterwards altered, evidently through inadvertence, by the legislature; and, as the clause now stands, it authorises the clerk of the Foreign Court to re-issue the warrant or order to the officer of his own Court, the words being, that when the ‘warrant or order shall have been sealed and stamped by the clerk of another (i. e. the Foreign) County Court, pursuant to the 9 & 10 Vict. c. 95, s. 104, it shall be lawful for the said clerk of *such other Court* to re-issue the said warrant or order to the high bailiff of *such other Court*,’ i. e. of the Foreign Court, if the words are to be construed according to the rules of grammar. It may, perhaps, be thought, that, as the strict grammatical construction of the clause in question would totally defeat the object for which it was framed, and would, moreover, be repugnant to the concluding part of the same section, as will be seen on reference to page

199, it will, judicially, be held to have the meaning which the words originally used obviously bore; and, in this case, no practical inconvenience will ensue from the error thus curiously admitted into the Statute Book."

The following are the principal Contents of the several Chapters of the Volume :—

I. The districts, sittings, and officers of the Court :—1st. The districts and sittings of the Court. 2nd. The officers of the Court.

II. Jurisdiction of the Court—Concurrent jurisdiction—Prohibition :—1st. Jurisdiction of the Court. 2nd. Concurrent jurisdiction. 3rd. Prohibition.

III. Proceedings by plaint and summons—Preliminary remarks as to parties to the suit :—1st. Proceedings by plaintiff before the hearing. 2nd. Proceedings by defendant before the hearing. 3rd. The hearing. 4th. Judgment—New trial—Costs. 5th. Execution against the goods—against the person—Generally. 6th. Appeal.

IV. Proceedings collateral to the suit, &c. :—1st. Of execution against a tenant where rent is due to his landlord—Interpleader—Replevin, and proceedings for recovering the possession of tenements. 2nd. Abatement—Proceedings in nature of *sci. fa.*—By and against executors and administrators. 3rd. Proceedings for penalties. 4th. Certiorari.

The Appendix comprises,—1st, the Circuits, Districts, and Court Towns of the several Counties, and the several Orders in Council; 2ndly, a Table of Fees, with explanatory observations; 3rdly, the new Act, 15 & 16 Vict. c. 54. And these are succeeded by a copious Index.

Mr. Broom does not enter into any discussion on the right of advocacy in the County Courts. Under the head of "*How the parties may appear*," he merely quotes the words of the 15 & 16 Vict. c. 54, s. 10, —and in this we think he has adopted a discreet course.

We cannot concur with the Author in ascribing a high degree of popularity to the County Courts, except so far as their organs in the newspapers are eloquent in their praise. A very large proportion of the suitors tell a very different tale, both of the failure of justice and of the costliness and inconvenience of their proceedings.

The County Courts have now been in operation more than five years, but notwithstanding the efforts of the press in their favour, and the anxious endeavours of all parties interested in them to show the great benefits the public are deriving, founded upon the number of plaints heard, they are likely to prove a failure from the pertinacity with which those who have to administer the law adhere to those parts of the measure

which are manifestly erroneous in principle, and have been proved by experience to be most mischievous to the honest trader.

One of the most objectionable of the principles upon which the Acts have been framed is, that in every instance defendants are invariably dealt with more favourably than plaintiffs. This is the more obnoxious as much the larger proportion of the cases is for debts which cannot and are never intended to be disputed, and in which instances the defendant must be in the wrong.

Notwithstanding this, the plaintiff in every case where he lives within 20 miles of the defendant, must in the ordinary course follow the defendant into his district. He is not allowed to serve his own process, but must trust to the disinterested activity or interested inactivity of the officer of the Court; he must find out whether the process has been served, and after being put to the expense of a hearing, is left (as to the time of payment of his debt) to the mercy of the Judge, who is virtually authorised by the Act to make an *ex post facto* contract between the parties.

If the expense and inconvenience of requiring a hearing were confined to the payment of the hearing fee, the evil would not be so great, but the hearing involves the necessity of the plaintiff and all his witnesses attending the Court at a great expense and loss by being absent from his business, perhaps for a whole day, at the risk of being nonsuited, when the defendant has no intention whatever of disputing the debt, and when the case is called on, the only object he has to get is more time for payment than the plaintiff is willing to give. On the other hand, in the Superior Courts if the defendant does not put in a plea disputing the debt, the plaintiff takes a judgment by default as a matter of course, and the proportion of cases which go to trial is very small. In the County Courts, if the debt be for 5s. only, the plaintiff must necessarily go through the ordeal and expense of a hearing.

## THE LONG VACATION.

### DISPERSION OF LAWYERS.

"It is the long vacation in the regions of *Chancery Lane*. The good ships *Law* and *Equity*, those teak-built, copper-bottomed, iron-fastened, brassen-faced, and not by any means fast-sailing clippers, are laid up in ordinary. The Flying Dutchman, with a crew of ghostly clients, imploring all whom they may encounter to peruse their papers, has drifted, for the time being, Heaven knows where. The Courts are

all shut up; the public offices lie in a hot sleep; *Westminster Hall* itself is a shady solitude, where nightingales might sing, and a tenderer class of suitors than is usually found there, walk.

"The *Temple*, *Serjeants' Inn*, and *Lincoln's Inn*, even unto the *Fields*, are like tidal harbours at low water; where stranded proceedings, offices at anchor, idle clerks lounging on lopsided stools that will not recover their perpendicular until the current of Term sets in, lie high and dry upon the ooze of the Long Vacation. Outer doors of chambers are shut up by the score, messages and parcels are to be left at the porter's lodge by the bushel. A crop of grass would grow in the chinks of the stone pavement outside *Lincoln's Inn Hall*, but that the ticket-porters, who have nothing to do beyond sitting in the shade there, with their white aprons over their heads to keep the flies off, grub it up and eat it thoughtfully.

There is only one Judge in town. Even he only comes twice a week to sit in Chambers. If the country folks of those assize towns on his circuit could only see him now! No full bottomed wig, no red petticoats, no fur, no javelin-men, no white wands. Merely a close-shaved gentleman in white trowsers and a white hat, with sea-bronze on the judicial countenance, and a strip of bark peeled by the solar rays from the judicial nose, who calls in at the shell-fish shop as he comes along, and drinks iced ginger beer!

"The Bar of England is scattered over the face of the earth. How England can get on through four long summer months without its Bar—which is its acknowledged refuge in adversity, and its only legitimate triumph in prosperity—is beside the question; assuredly that shield and buckler of Britannia are not in present wear. The learned gentleman who is always so tremendously indignant at the unprecedented outrage committed on the feelings of his client by the opposite party, that he never seems likely to recover it, is doing infinitely better than might be expected, in *Switzerland*. The learned gentleman who does the withering business, and who blights all opponents with his gloomy sarcasm, is as merry as a grig at a French watering place. The learned gentleman who weeps by the pint on the smallest provocation, has not shed a tear these six weeks. The very learned gentleman who has cooled the natural heat of his gingery complexion in pools and fountains of law, until he has become great in knotty arguments for Term time, when he poses the drowsy Bench with legal "chaff," is inexplicable to the uninitiated and to most of the initiated too, is roaming, with a characteristic delight in aridity and dust, about *Constantinople*. Other dispersed fragments of the same great Palladium are to be found on the canals of *Venice*, at the second cataract of the *Nile*, in the baths of *Germany*, and sprinkled on the sea sand all over the English coast. Scarcely one is to be encountered in the deserted region of Chancery Lane. If such a lonely member of the Bar do flit across the

waste, and come upon a prowling suitor who is unable to leave off haunting the scenes of his anxiety, they frighten one another, and retreat into opposite shades.

"It is the hottest long vacation known for many years. All the young clerks are madly in love, and, according to their various degrees, pine for bliss with the beloved object, at *Margate*, *Ramsgate*, or *Gravesend*. All the middle aged clerks think their families too large.

"There are offices about the Inns of Court in which a man might be cool, if any coolness were worth purchasing at such a price in dullness; but the little thoroughfares outside those retirements seem to blaze. In *Mr. Krook's* court, it is so hot that the people turn their houses inside out, and sit in chairs upon the pavement—*Mr. Krook* included, who there pursues his studies, with his cat (who never is too hot) by his side.

"Over all the legal neighbourhood, there hangs, like some great veil of rust, or gigantic cobweb, the idleness and pensiveness of the Long Vacation. *Mr. Snagsby*, law stationer, of *Cook's* [quare Took's] Court, *Cursitor Street*, is sensible of the influence, not only in his mind as a sympathetic and contemplative man, but also in his business as a law stationer aforesaid. He has more leisure for musing in *Staple Inn* and in the *Rolls Yard*, during the Long Vacation, than at other seasons; and he says to the two 'prentices, 'What a thing it is, in such hot weather, to think that you live in an island, with the sea a rolling and a bowling right round you.'"—1 *Bleak House Reports*, p. 183.

## SUGGESTED CONSOLIDATION OF THE ORDERS IN CHANCERY.

To the Editor of the Legal Observer.

SIR,—Once more the attorneys and solicitors have to learn anew a portion (and this time a very considerable portion) of the practice of their Profession. Fortunately, they have the Long Vacation before them; and while on their trips to the sea-side, they may take in one pocket the "Life of Lord Langdale," they had better put in the other the Chancery, Common Law, and County Courts Acts of last Session. This, however, will not be of much use unless the Rules and Orders of the Courts be ready to accompany them, and it would be conferring a great boon on them if the Judges would issue them speedily. A still greater boon, however (though incompatible, I fear, with the very speedy issue of the Orders), might be granted with reference to the Orders of the Court of Chancery.

It is only some twelve years since I entered the Profession; and yet, in my short time, I have seen not a few changes, from the abolition of the Six Clerks' Office and Equity side of the Exchequer, down to the introduction of printed pleadings. All these changes have been effected or assisted by General Orders;



and so it was before my time. Orders, and parts of Orders, were from time to time directly repealed till the system became so cumbrous that the very framers of New Orders feared that their own vigilance was insufficient to rake out all of the old which ought to be repealed; and some such phrase as "all other Orders and parts of Orders, so far as such other Orders and parts of Orders are inconsistent with these Orders, but not further or otherwise, are hereby abrogated and discharged" was adopted to make the Orders consistent, but certainly to puzzle the practitioner.

Now that we have a radical change in the practice of the Court of Chancery, a fit opportunity seems to be afforded to the Lord Chancellor for causing the various Orders to be fully looked over, and issuing afresh all such as really do and are intended to exist in one code;—abolishing all the old ones.

Uncertainty in practice is an evil which presses particularly upon solicitors. The barrister holds many a brief through it; the solicitor merely bears all the blame of delay, miscarriage, and expense. The evil to the client is obvious.

I would suggest, therefore, a memorial from the solicitors to the Lord Chancellor on the subject; and, whether it were successful or not, I am sure that it would meet with that attention in the high quarter to which it would be addressed which any application founded on a desire for the increased efficiency of the Profession would deserve. E. J. F.

### LEGAL OBITUARY.

#### VICE-CHANCELLOR SIR JAMES PARKER.

WE regret to record that this learned and much respected Judge died suddenly of *angina*

*pectoris*, on August 13 last, at his country seat, Rothley Temple, Loughborough, Leicestershire.

He was the son of Charles Stuart Parker, Esq., of Blockairs, near Glasgow, and was born in 1803, and educated at the Grammar School and College of Glasgow. He afterwards proceeded to Trinity College, Cambridge, and was seventh wrangler in 1825, Mr. Loftus T. Wigram, Q. C., being eighth.

He was called to the Bar by the Honourable Society of Lincoln's Inn, on Feb. 6, 1829, received a silk gown in July, 1844, and was appointed a Vice-Chancellor in October, 1851, upon the changes introduced by the 14 & 15 Vict. c. 83 (The Administration of Justice in Chancery Act).

His Honour had arranged to act as the Vacation Judge in Equity, and to hear applications of a pressing nature.

### NOTES OF THE WEEK.

#### PROROGATION OF PARLIAMENT.

At the meeting of the Council on Aug. 18, Parliament, which was appointed to meet on Friday the 20th August, was prorogued to Thursday, the 21st day of October next.

#### LAW APPOINTMENT.

Samuel Warren, Esq., Q. C., has been appointed Recorder of Hull, vacant by the death of T. C. Granger, Esq., Q. C., M. P. This important office was previously held by Matthew Talbot Baines, Esq., Q. C., and by Mr. Justice Cresswell.

### RECENT DECISIONS IN THE SUPERIOR COURTS.

#### AND SHORT NOTES OF CASES.

##### Lord Chancellor.

*In re Royal Bank of Australia, ex parte Robinson's Executors.* July 8, 1852.

#### WINDING-UP ACTS. — EXECUTORS. — LIABILITY TO CONTRIBUTE. — DIRECTOR.

*A director agreed to take 100 shares in accordance with a resolution of the directors to take additional shares amongst themselves, and he gave a promissory note for 1,000*l.* to secure payment of the deposits and calls. There were debtor and creditor entries in the bank ledger in respect of the dividends on the shares and interest on the note. The executors having taken no steps at his death in respect of disposing of the shares or ascertaining the extent of his interest in the concern: Held, confirming the decision of Vice-Chancellor Knight Bruce, that they were liable to contribute in respect of the 100 shares.*

THIS was an appeal from Vice-Chan-

cellor Knight Bruce confirming the Master's decision inserting the appellants on the list of contributories to this company as executors of Mr. Robinson. The deceased was a director, and held 20 shares as a qualification and had agreed, upon the directors taking a further number amongst themselves, to take 100 additional shares, giving a promissory note for 1,000*l.* for the deposits and calls. It appeared, however, that there were entries in the company's ledger in respect of the dividends on the shares and interest on the note, and that upon his death no communication had been made by the directors to the appellants as to the number of shares held by their testator, nor had the appellants taken any steps to dispose of his shares.

Sir W. Page Wood in support; Daniel and Roxburgh for the official manager, contra.

The Lord Chancellor affirmed the decision of the Vice-Chancellor.

**Lords Justices.**

*In re Lord Dinorben, ex parte Hughes.* July 17, 1852.

**LUNATIC.—COMMITTEES OF ESTATE.—TENANT IN TAIL IN REMAINDER.—ONUS OF PROVING UNFITNESS.**

Held, that the tenant in tail in remainder was *prima facie* entitled as of right to be one of the committees of the estate of a lunatic tenant in tail in possession, and that the onus of showing him to be an unfit person laid on the parties objecting to his appointment. An order was therefore made appointing him in conjunction with the three committees of the person of whom the Master had approved as committees of the estate.

This was a petition on behalf of the tenant in tail in remainder, praying that the Master's report, approving of the three committees of the person of this lunatic as committees of the estate, might not be confirmed, but that the petitioner might be appointed committee either alone or in conjunction with the others. There was also a cross-petition on behalf of the committees approved by the Master for the confirmation of his report.

Sir W. Page Wood and Selwyn, in support of the petition, referred to *In re Webb*, 2 Phill. 532.

Bethell, Q. C., and Shapter, for the committees of the person, contra, and in support of the cross-petition; Lloyd, Q. C., and Hislop Clarke, for an infant daughter of the lunatic on the same side, upon the ground the committees approved by the Master were those nominated by the lunatic's father.

The Lords Justices said, the general practice of this Court was, that the heir or quasi heir or remainder-man should be as of right the committee or one of the committees of the estate, and the onus of showing he was an unfit person to be appointed laid on those objecting to his appointment. As nothing had been shown to that effect in respect of the petitioner, he would be appointed in conjunction with the three approved of by the Master.

**Master of the Rolls.**

*Birch v. Jennings.* July 17, 1852.

**CLAIM.—SPECIFIC PERFORMANCE OF AGREEMENT.—DESCRIPTION.—DEFICIENCY IN ACREAGE.—COMPENSATION.**

In an agreement for the sale of certain land, the quantity was stated to contain 14 acres 2 roods or thereabouts, as taken from the old lease—but the purchaser obtained the insertion of a clause, that he was not to be bound by the acreage. The land on admeasurement proved to be less in quantity than represented by 2 acres 1 rood and 13 perches: Held, that the vendor was not entitled to claim the specific performance of the contract unless he compensated the purchaser for the deficiency in quantity,

and the claim was therefore directed to be dismissed with costs, in the event of his not electing to make such deduction.

Roupell appeared in support of this claim, for the specific performance of an agreement dated in May, 1851, to purchase for the sum of 1,500*l.*, certain freehold property at Bromford Forge, Warwickshire—the land being described from the old leases as containing 14 acres, 2 roods, or thereabouts, but the agreement included a clause, which was inserted at the defendant's instance, that he was not to be bound by acreage. It appeared on admeasurement that the land was 2 acres, 1 rood, and 13 perches less than the quantity represented, and the defendant, thereupon, claimed a reduction in the price. The plaintiff declined to accede to this, but offered the defendant to rescind the contract, and upon his refusal this claim was filed.

R. Palmer for the defendant, was not called on.

The Master of the Rolls said, the contract could not be enforced unless the plaintiff consented to compensate the defendant for the deficiency, which consisted of more than one-seventh of the whole, and gave the plaintiff the option of taking an order on these terms, or of having the claim dismissed with costs.

**Vice-Chancellor Turner.**

*Cole v. Miles and others.* July 8, 1852.

**EXECUTOR AND SPECIFIC LEGATEE, SETTING ASIDE SALE BY.—ASSENT OF CO-EXECUTORS.—DUTY OF PURCHASER.—SOLICITOR.**

An executor and specific legatee of a leasehold estate sold the same to a purchaser for whom he acted as solicitor, and in the conveyance the will was recited, and proof by two executors, and that the executors had assented to the bequest, and then purported to convey as executor and assignee. It appeared he was largely indebted to the estate: Held, dismissing with costs a bill by two of the other executors to set aside the conveyance as fraudulent, that it was not the duty of the purchaser to inquire whether all the executors had assented to the bequest; and held, also, that the suit could not be maintained by the co-executors, although it might be in a proper case by legatees or cestuis que trustent.

THIS bill was filed by two of the executors and devisees in trust under the will of Mrs. Sutherland, to set aside a conveyance of certain leasehold estate by Mr. Townsend, one of the two other executors and devisees, to the defendant Miles, and for a declaration that the same was fraudulent and void as against the plaintiffs, and for the re-conveyance of the property by the purchaser. It appeared that Mr. Townsend was specific legatee of the property in question and had acted as solicitor for both parties on the sale to Mr. Miles,—the conveyance reciting the will and proof by two

executors, and that they had assented to the bequest to Mr. Townsend, who then purported to convey as executor and assignee. On the reference to the Master in a suit for the administration of the property of the testatrix, Mr. Townsend had been reported as considerably indebted to the estate.

*Kenyon Parker* and *F. T. White*, for the plaintiff, contended the recital in the conveyance was sufficient to lead a prudent man to inquire into the truth of the facts, and that the purchaser, by employing Mr. Townsend as his solicitor, had constructive notice of the fraudulent transaction.

*Russell, Bacon, Willcock, E. G. White, J. V. Prior, Morris, and Scott* for the defendants.

The *Vice-Chancellor* said, that the Court had never imposed the burden on purchasers to inquire whether all the executors had assented to a bequest, and it would be most unwise by so doing to impede the powers of executors to deal with the estate of their testators. Although there were cases in which legatees or *cestuis que trustent* might follow property which had been improperly aliened with notice to the purchasers, yet such a suit could not be maintained by another executor. In this case the defendant conveyed as executor and assignee, and he really filled the character of assignee at law upon his legacy being assented to, and as there was no evidence of fraud, the bill must be dismissed with costs.

#### *Vice-Chancellor Kindersley.*

*Van v. Jackson.* July 19, 1852.

**MARRIAGE SETTLEMENT.—POWER OF ADVANCEMENT.—OUTFIT FOR CHILDREN ABOUT TO EMIGRATE.**

*An order was made, on the petition of the parents and of three young men, about to proceed to Australia, for the application of a portion of the shares they were entitled to under the marriage settlement, which contained a power to the trustees to apply a portion for their advancement, in their outfit,—upon an affidavit that the money would be so applied.*

*Bacon* and *Baggallay* appeared in support of this petition, which was presented by the parents and by three young men, for the application, under a power in the marriage settlement to the trustees to apply a portion of the shares they would be entitled to for their advancement, upon their outfit on proceeding to Australia.

The *Vice-Chancellor* said, the order might be made upon the production of an affidavit certifying the money was to be so applied.

#### *Vice-Chancellor Parker.*

*Middleton v. Middleton.* July 7, 1852.

**ISSUE DEVISAVIT VEL NON.—WILL TORN UP BY HEIR.—COSTS.**

*The heir-at-law of a testator tore up the will*

*which was being read to him, but the pieces were afterwards collected and put together and the will proved by the executor: Held, on fur. dirs., that although the costs of an issue devisavit vel non asked by him had not been increased thereby and in which the will was established, he was liable by his misconduct to the costs of such issue.*

*THE* will in this case having, on an issue *devisavit vel non* asked for by the heir-at-law, been established against him,

*Russell* and *W. H. Bagshawe*, for the plaintiff, asked on fur. dirs. that the costs thereof should be paid by him, as it appeared he had torn up the will upon its being read to him by a person to whom the testator's widow had given it for that purpose, and although the pieces had been afterwards collected and put together, and the will duly proved by the executor. They cited *Berney v. Eyre*, 3 Atk. 387.

*Robson* for another party on the same side.

*Stuart* and *Faber* for the heir-at-law, contra, on the ground the costs of the issue had not been increased by his act.

The *Vice-Chancellor* said, that although the costs of the issue had not been increased, yet the misconduct of the heir was so great, that he ought to pay the costs of the issue.

#### *Court of Queen's Bench.*

*Regina v. Registrar of Friendly Societies.* June 7, 1852.

**FRIENDLY SOCIETY.—POWER TO MAKE RULE REMOVING OFFICES INTO ANOTHER COUNTY.—MANDAMUS.**

*Held, discharging a rule for a mandamus on the registrar, that a friendly society has no power under the 9 & 10 Vict. c. 27, s. 12, to make a rule removing the offices of the society from Rochester to London, inasmuch as that Act did not either expressly or impliedly repeal the proviso in the 10 Geo. 4, c. 56, s. 10, that the place of meeting should be within the county in which the rules of the society were enrolled.*

THIS was a rule nisi granted on May 25 last, for a mandamus on the Registrar of Friendly Societies to certify, under the 10 Geo. 4, c. 56, as altered by the 4 & 5 Wm. 4, c. 40, an amended rule of the Kent Mutual Insurance Society, established at Rochester, for the removal of the society to Old Jewry, London.

The *Attorney-General*, *Solicitor-General*, and *B. Andrews*, Q. C., showed cause against the rule, on the ground that section 10 of the 10 Geo. 4, c. 56, which provided that "the place or places at which such society intended to hold their meetings shall be situate within the county in which the rules of the said society are enrolled," was not repealed by the 9 & 10 Vict. c. 27, s. 12, which directed the transcript of the rules to be deposited with the Registrar

of Friendly Societies instead of the Clerk of the Peace.

*Willes* in support.

The Court said, that the 9 & 10 Vict. c. 27,

did not either impliedly or expressly repeal the proviso in the 10 Geo. 4, c. 56, s. 10, and that the society could not make the regulation, and the rule was therefore discharged.

## ANALYTICAL DIGEST OF CASES,

REPORTED IN ALL THE COURTS.

### Courts of Equity.

[For the previous Sections of the Digest in this Volume, see

*Privy Council*: Appeals, p. 17.

*House of Lords*: Appeals, p. 38.

#### Courts of Equity:

Law of Attorneys and Solicitors, p. 125.

Contributories under the Winding-up Act, p. 143.

Law of Trustees, p. 165.

Lunacy, p. 185.

Law relating to Infants, p. 186.

Law relating to Charities, p. 203.

Appeals in Bankruptcy, p. 225.

Construction of Statutes, pp. 104, 286, 306.]

### CONSTRUCTION OF STATUTES.

#### COPYRIGHT.

1. *Design*.—*Injunction*.—Under the Copyright of Designs' Act, 5 & 6 Vict. c. 100, the proprietor of a design protected by the Act, is entitled to an injunction restraining, not merely the sale, but the manufacture of any article to which the design is applied during the period of the protection.

Form of order on compromise staying all proceedings, except on breach of an injunction. *Macrae v. Holdsworth*, 2 De G. & S. 496.

2. *Musical work*.—*Alien*.—An alien resident abroad composed three musical pieces in a foreign country, and sold the copyright in this country to the plaintiff, a British subject, who published the work in London. The work was, on the same day, published in Prussia. On motion in a suit instituted by the purchaser of the copyright against a person who had, without leave, published the three musical compositions in this country: *Held*, that the publication was within the Copyright Act, 5 & 6 Vict. c. 45; and the Court granted an injunction restraining the unauthorised publication. *Buxton v. James*, 5 De G. & S. 80.

3. *Periodical work*.—Under the Act to amend the Law of Copyright (5 & 6 Vict. c. 45), actual payment for an article written for a periodical work, is a condition precedent to the vesting of the copyright in the article in the proprietor of the work: a contract for payment is not sufficient. *Richardson v. Gilbert*, 1 Sim. N. S. 336.

4. *What amounts to publication of pattern*.—Whether, under the Designs' Copyright Act (5 & 6 Vict. c. 100), the exhibition of a pattern on paper, before it is applied to any of the fabrics mentioned in the Act, and registered, is a publication of it, so as to deprive the pro-

prietor of all right to protection for that particular pattern—*Quere*. *Dalglisch v. Jarvie*, 2 H. & T. 431.

5. *Injunction*.—The protection of copyright for three years, granted by 6 & 7 Vict. c. 65, to "any new or original design for any article of manufacture having reference to some purpose of utility, so far as such design shall be for the shape or configuration of such article," is not clearly applicable to the design of a "protector label," which consisted in making in the label an eyelet-hole, and lining it with a ring of a metallic substance, through which a string attaching the label to packages passed. The Court refused to grant an injunction before the hearing against an infringement of such design.

*Quere*, the meaning of the words "shape or configuration," in the Act. *Margetson v. Wright*, 2 De G. & S. 420.

6. *Construction of 4th section*.—"Publication."—Whether in the condition of copyright mentioned in the 4th section of the Designs' Copyright Act (5 & 6 Vict. c. 100), that the design has before publication been registered, the term publication is limited to publication after the design has been embodied into some fabric—*Quere*. *Dalglisch v. Jarvie*, 2 M'N. & G. 231.

7. *Breach of confidence in publishing etchings*.—*Injunction*.—Where a workman, intrusted with copperplates for the purpose of taking impressions for the plaintiff of etchings made by the latter, and not intended for publication, took impressions for himself, in violation of the trust, and sold the impressions to the defendant, who published a catalogue of them, accompanied by remarks of his own: *Held*, that the plaintiff was entitled at the hearing to a perpetual injunction to restrain the publication of the catalogue, and to a decree ordering the impressions to be destroyed; and that the defendant was not entitled to a preliminary trial of his title at law.

Upon a previous interlocutory application for an injunction, the evidence only made out a case of suspicion that a breach of confidence had been committed. On the defendant putting in his answer, denying notice of any such breach of confidence, but not fully or satisfactorily accounting for his possession of the etchings, and moving to dissolve the injunction: *Held*, that there was sufficient ground for suspicion that there were equitable as well as legal grounds for interference, to make it right to continue the injunction to the hearing (on proper undertakings), without putting the plaintiff to establish a title at law.

*Semble*, that independently of the breach of

trust, the legal right of the plaintiff to preserve the privacy of his unpublished works was so clearly infringed by the publication of the catalogue, as to entitle him to have it protected by injunction, without obtaining the decision of a Court of Law in its favour; and that the distribution of a few copies of the etchings to private friends did not prejudice this right. *Prince Albert v. Strange*, 2 De G. & S. 652; *Attorney-General v. Same*, ib., 652.

#### LIMITATIONS, STATUTE OF.

1. *Guardian. — Trustee.* — A testamentary guardian is a trustee, and therefore the Statute of Limitations is inapplicable to accounts as between him and his ward. *Mathew v. Brise*, 14 Beav. 341.

Case cited in the judgment: *Mellish v. Mellish*, 1 Sim. & Stu. 145.

2. 3 & 4 Wm. 4, c. 27, s. 42. — *Charge on real estate. — Arrears of interest. — Claim before the Master.* — On a bill to enforce a charge acquired by a judgment creditor on the estate of the debtor, a receiver was appointed, and at the hearing, a reference as to incumbrances on the estate was directed. A state of facts and claim carried in before the Master under such inquiry by an incumbrancer, not a party to the suit, was held to take the charge as to the interest out of the Statute of Limitations (3 & 4 Wm. 4, c. 27, s. 42); and the incumbrancer was held to be entitled to arrears of interest for six years antecedent to the time of such claim. *Greenway v. Bromfield*, 9 Hare, 201; *Handley v. Wood*, ib.

Cases cited in the judgment: *Hunter v. Nockolds*, 1 M'N. & G. 654; 1 H. & T. 651; *Henry v. Smith*, 2 D. & War. 381.

3. In 1825, the holder of a promissory note brought an action against the maker, who became lunatic, whereupon the lunatic and his committee filed a bill to restrain proceedings in the action, on the ground of alleged insufficiency of consideration for the note; and, upon the motion for an injunction, an order was made by consent, staying proceedings in the action and the suit, with liberty for the holder of the note to go in and establish his claim in the lunacy. He accordingly took proceedings to support his claim before the Master in lunacy, who, however, disallowed it, and in Aug. 1830, made his report, without including in it the name of the holder of the note as a creditor. The lunatic died in March, 1843; and, in Feb. 1844, the holder of the note filed a creditors' bill against the representatives of the lunatic: Held, that the plaintiff was not entitled to be relieved from the effect of the Statute of Limitations. *Rock v. Cooke*, 1 De G. & S. 675.

4. *Acknowledgment.* — On March 4, 1811, an agreement was entered into for the purchase of freehold land for 6,300*l.*, to be paid on the 13th of May, 1811, and the purchasers were immediately put into possession.

In 1827, the purchaser, before any conveyance was made to him, and before he had paid any part of the purchase-money, died, having

devised the lands to trustees. The trustees disclaimed, and others were appointed by the Court of Chancery. In 1834, the attorney of these trustees wrote to the assignees of the vendor (who had become bankrupt), stating that the purchase-money was ready to be paid on the purchase being completed. On a bill filed by the assignees in 1844, to enforce the lien, to which the Statute of Limitations, 3 & 4 Wm. 4, c. 27, was set up as a defence by answer: Held —

1st. That the trustees were persons by whom the purchase-money was payable within the meaning of the Statute of Limitations, 3 & 4 Wm. 4, c. 27, s. 40.

2nd. That the acknowledgment of their attorney in 1834 was sufficient, within the meaning of the exception in the Act, to withdraw the case from its operation, and, for this purpose, to bind the *cestuis que trustent*, although the trustees were appointed, not by or under any powers contained in the will, but by the Court of Chancery.

3rd. That the answers claiming the benefit of the statute must be considered as alleging that no acknowledgment of the right to receive the money had been given or signed by the person by whom it was payable, or his agent; and that, therefore, although the bill did not allege any acknowledgment to have been made, the plaintiffs were entitled to put the acknowledgment in evidence on an appeal, although it was not read or proved at the original hearing.

4th. That this only applied to the trustees who had admitted the agency of the attorney, but that, as against other defendants who had not made a similar admission, the assignees were entitled to an inquiry as to any acknowledgment having been given. *Tyft v. Stephenson*, 1 De G., M'N. & G. 28.

Case cited in the judgment: *Lord St. John v. Boughton*, 9 Sim. 219.

#### PREROGATIVE OF CROWN.

*Subject contesting with Crown.* — What the object of 21 Jac. 1, c. 14. — The object of the Stat. 21 Jac. 1, c. 14, was to place a party contesting with the Crown in the same situation as a party contesting with any other plaintiff. *Attorney-General v. Corporation of London*, 2 H. & T. 1; 2 M'N. & G. 247.

But this Statute does not apply in Equity, where, in the matter of discovery, the Crown and a subject litigating together are precisely on the same footing as ordinary parties. *Attorney-General v. Corporation of London*, 2 M'N. & G. 247.

#### PRISONER.

1. *Stat. 48 G. 3, c. 123. — Discharge.* — The Lord Chancellor has jurisdiction, as the Judge of one of the Superior Courts of Record at Westminster, to discharge a prisoner under the 43 Geo. 3, c. 123. *Lister v. Lister*, 2 H. & T. 174.

2. *Attachment. — Discharge.* — 1 Wm. 4, c. 36, s. 15. — Where a defendant in custody under an attachment for non-payment of costs, applied to

be discharged under 1 Wm. 4, c. 36, s. 15, r. 17, the Court declined to act, its jurisdiction not being clear.

*Semble*, that a prisoner, under such circumstances, can only be relieved under the provisions of the Insolvent Debtors' Acts. *Snowball v. Dixon*, 2 De G. & S. 9.

#### PUBLIC STATUTES.

*Prolixity in pleadings.*—Prolixity in setting out at length, in a petition or other pleading, clauses of a public Statute. *In re Manchester and Leeds Railway Company, ex parte Osbaliston*, 8 Hare, 31.

#### RAILWAY ACTS.

*Interference of Court when whole undertaking cannot be completed.*—The powers contained in Railway Acts are given only in the contemplation of the supposed public good by completion of the whole work; and this Court will interfere when it sees that the whole undertaking cannot be completed. *Cohen v. Wilkinson*, 12 Beav. 125.

#### SHIP REGISTRY ACTS.

1. *Registry conclusive notwithstanding fraud.*—A bill stated that the vendors of a ship executed a bill of sale to a purchaser, which was to be handed to him upon his paying the consideration in a manner stipulated, but that he took it away with some other papers, as it was supposed, by mistake, and afterwards returned it, saying he could not comply with the terms.

The bill further alleged, that the plaintiffs, the vendors, had discovered that the defendant, the purchaser, had taken advantage of his accidental possession of the document to make himself the registered owner of the ship, and was about to sail in her: *Held*, that the alleged fraud would not enable the Court to interfere, and a demurrer to the bill was allowed. *Follett v. Delany*, 2 De G. & S. 235.

2. *Interest in proceeds of sale of ship of non-registered owner.*—There is nothing in the policy of the ship Registry Acts to prevent a third party, not having any registered share in a ship, from acquiring from the owner an interest in the proceeds of the sale of the ship in the hands of a purchaser, when the ship shall have been sold, the Court not being required to recognise any interest in such third person in the ship itself, *—semble*.

But whether, under a contract by which a party has an interest in the proceeds of the sale of a ship, such party can compel the owner to sell the ship, or obtain a decree for the sale, *—quære*. *McCalmont v. Rankin*, 8 Hare, 1.

#### SPECIAL CASES.

*Cases to be sent from Chancery for the opinion of Courts of Law.*—Statutes 13 & 14 Vict. c. 35, s. 14, and 14 & 15 Vict. c. 83, s. 8.—Questions on which it is proper for the Court of Chancery to send cases for the opinion of Courts of Common Law, or to seek the assistance of Judges of such Courts, under the Statutes 13 & 14 Vict. c. 35, s. 14, and 14 & 15

Vict. c. 83, s. 8, or otherwise. *Falkner v. Grace*, 9 Hare, 280.

#### STOP ORDER.

1 & 2 Vict. c. 110.—*Construction of 14th section.*—The proviso contained in the 14th section of the Act 1 & 2 Vict. c. 110, that no proceeding shall be taken to have the benefit of the charge created under that section until after the expiration of six calendar months from the date of the charging order does not prevent the creditor from obtaining a stop order to restrain the debtor from receiving dividends of stock accruing within the six months.

The correct construction of the proviso is, that although no steps can be taken to enforce immediate payment of the debt by realising the security, yet that the judgment creditor may in the meantime, by force of the order, prevent the security given him by the Statute from being defeated or diminished *pro tanto*, by stopping payment to the debtor of part of his security. *Watts v. Jefferyes*, 3 M'N. & G. 372.

#### THELLUSSON ACT.

1. *Accumulation.*—A direction in a will to accumulate the income of trust funds for 21 years after the testator's death, and at the expiration of that term, during the minorities of the persons entitled under the trusts: *Held*, to be good only for the 21 years. *Wilson v. Wilson*, 1 Sim. N. S. 288.

2. A testator gave his residuary personal estate to A. and B., in trust to accumulate the income during the life of his niece, and, on her death, to transfer the capital and accumulations to her children, in equal shares; the shares to be vested in her sons at 21, and, in her daughters at that age or marriage. The niece lived more than 21 years after the testator's death.

*Held*, that the direction to accumulate was not a provision for raising portions within the meaning of the 2nd section of the Thellusson Act, and that, therefore, it became void, under the 1st section, at the expiration of 21 years from the testator's death: and that his next of kin were, thenceforth, entitled to the income of the capital and accumulations. *Bourne v. Buckton, ex parte Haig*, 2 Sim. N. S. 91.

Cases cited in the judgment: *Eyre v. Marsden*, 2 Keen, 564; *Shaw v. Rhodes*, 5 Myl. & C. 133; 5 Cl. & F. 114.

3. *Premiums.*—*Policy of life assurance.*—*Accumulation.*—A direction by will, to pay out of the testator's property the premiums upon a policy of insurance, effected by the testator upon the life of another person, is valid for the whole life insured, and is not an accumulation, by the Thellusson Act (39 & 40 Gen. 3, c. 98), restricted to 21 years only. *Bassil v. Lister*, 9 Hare, 177.

4. *Distribution not accelerated by operation of the Act.*—A testator devised estates, on trust, to pay the rents to a tenant for life; and after her death, on trust, to accumulate the same for 21 years from the death of the tenant for life, and, at the end of that period, to divide the

accumulations among defined classes of objects, and with limitations in remainder after the expiration of 21 years, but no residuary devise: *Held*, that the time of distribution was not accelerated by the operation of the Thellusson Act; but that the rents accruing between the end of the legal period for accumulation and the time of distribution belonged to the heir-at-law of the testator. *Nettleton v. Stephenson*, 3 De G. & S. 366.

Cases cited: *Eyre v. Marsden*, 2 Keen, 564; 4 Myl. & C. 231; *Davidson v. Dallas*, 14 Ves. 576.

#### TITHES.

Where non-payment of tithes, or the payment of a modus in lieu of tithes, for the period prescribed by the Act 2 & 3 Wm. 4, c. 100, is sufficiently proved, the landowner will be protected from the payment of tithes without being required (as before the passing of that Act), to show the legal origin of the modus, or of the discharge from tithes.

The operation of the Act is not confined to cases of claim of entire exemption from tithes, but is applicable also to cases of claim of partial exemption, although tithes have been paid in respect of other titheable matters, the produce of the same lands: (*Semble*).

Where the claim of a vicar to tithes of certain matters is met by an allegation of enjoyment of the land for the time prescribed by the Act, without payment of tithes on any of the matters in question, it is not competent for the vicar to go into evidence to prove payment of tithes in respect of other titheable matters, the produce of the same lands, unless that fact is expressly alleged by him in the pleadings. *Salkeld v. Johnston*, 1 H. & T. 329; 1 M'N. & G. 242.

*Semble*. That a modus proved to have been acted upon for the prescribed period cannot be defeated on the ground of rankness. *Salkeld v. Johnston*, 1 M'N. & G. 242.

#### TITLE OF ACT OF PARLIAMENT.

The title cannot be resorted to for the purpose of construing the provisions of an Act of Parliament. *Hunter v. Nockold*, 1 M'N. & G. 640.

#### TRUSTEE ACT.

1. *Appointment of new trustees.*—*Who existing trustees under section 32.*—Two trustees of real estates named in a will, disclaimed. On a petition by a person entitled to a pecuniary legacy charged on the estates, to appoint two persons named in the petition as trustees in their place, it was suggested that the 32nd section of the Trustee Act authorised the Court to appoint trustees in substitution for or in addition to existing trustees only, and that the heir of the testator had become the existing trustee: *Held*, that the distinction was too narrow, and the Court, upon affidavit of the fitness of the proposed trustees, appointed them in substitution for the trustees who had disclaimed. *In Tyler's Trust*, 5 De G. & S. 56.

2. *Appointment of new trustees.*—*Where*

*trustees acting de facto.*—*Held*, that this Court has no power under the Trustee Act, 1850, to appoint trustees where there are trustees *de facto* acting as such. *In re Hadley*, 5 De G. & S. 67.

3. *23rd section.*—*Neglect of Trustee to receive dividends.*—*Order retrospective only.*—The person entitled for life to the dividends of stock held in trust, requested in writing two executors of a sole deceased trustee, in whose name the trust stock was standing in the bank books, to receive the dividends, and they made default for 28 days in doing so. Upon the petition of the person entitled for life to the dividends, the Court declared that the right to receive the dividends which accrued due prior to such request was vested in the petitioner; but *held*, that it had no authority to make any order as to any dividends accrued or to accrue subsequent to the date of the request. *In re Hartnall, ex parte Hodges*, 5 De G. & S. 111.

#### WILLS ACT.

1. A testator, by will executed in 1838, gave the residue of his real and personal estate to trustees, upon trust to pay an annuity to his wife, and to invest the sum of 1,000*l.*, and pay the interest to his son for life; and, after his decease, to any widow of his son; and, after her decease, upon trust, as to the principal, for his children; and subject to the annuity and to the above and another legacy, upon trusts expressed thus:—"In trust for all my children, in equal shares, and the heirs of their bodies (except as to my son J. F. G., and his children and their issue, whose share, in consequence of the 1,000*l.* set apart for him and them as aforesaid, shall be rated at 1,000*l.* less than the share of any other of my children); and in case there shall be a failure of issue of any of such children, then as to the share or shares of him, her, or them, whose issue shall so fail, to the use of the others or other of them, and the several heirs of their respective bodies." The testator was possessed of freehold and leasehold property, and left J. F. G. and one other child: *Held*, that J. F. G. was entitled in fee to half of the testator's freeholds, and absolutely to his leaseholds: that the parenthetical expression was merely explanatory, and that the 29th section of the Wills Act did not affect the devise and gift. *Green v. Green*, 3 De G. & S. 480.

2. *Appointment.*—*Power.*—A testatrix, having a general power of appointment over a sum of stock under the will of T. S., appointed the stock to her sons, Joseph and John, and her other children equally; and she left any other sum of money or property to which she then was or might thereafter become entitled under the will of T. S., to be divided amongst such of her children as might be living at her death; and she constituted Joseph her residuary legatee. John died before her.

*Held*, that Joseph was entitled to the share of the stock intended for John. *In re Spooner's Trust, ex parte Mouritz*, 2 Sim. N. S. 129.

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## LIABILITY OF PROVISIONAL COMMITTEE-MEN.

### RECENT DECISION.

THE law applicable to the liability of persons acting as provisional committee-men of abortive companies has long been remarkable for its uncertainty, and has furnished, perhaps, the most striking illustrations of judicial conflict to be found in the annals of modern English jurisprudence. Not only have Courts and Judges differed from each other on the subject, but, as frankly and pointedly stated by Lord St. Leonards in a late case in the House of Lords, "there is no Court, and hardly any Judge, before whom the question has not from time to time come, and scarcely one Judge before whom the question has originally come who has not differed from himself, or any Court which has not differed from itself, in regard to the points decided."

The amount of expense, anxiety, litigation,—and, we fear, must be added injustice,—occasioned by the uncertain state of the law upon this question defies calculation; but it is nevertheless a subject for congratulation that the matter is at length put upon a right footing by the decision of the House of Lords, in conformity with the unanimous and unhesitating opinion of the Common Law Judges.

In the first instance, it was taken for granted, that the mere fact of consenting to the insertion of his name in a prospectus as a provisional committee-man, rendered a man liable upon all contracts entered into by or on behalf of such provisional committee. When the soundness of this doctrine began to be questioned, and the principles upon which it was founded to be investigated, it was said that the relation of

co-provisional committee-men constituted an association of *quasi* co-partnership, in which one was agent for the other for the purposes of all preliminary proceedings; and by virtue of that relationship authorised to bind the co-promoters of the scheme. The decision of two cases<sup>1</sup> in the Court of Exchequer, at the close of the year 1846, tended materially to check the current of decision which had previously set in, and overwhelmed so many unfortunate defendants. The general principle involved in those decisions,—namely, that a provisional committee-man could only be liable for goods sold, or work and labour, on a contract made by him personally, or by his authorised agent,—has never been disputed in the Courts of Law. But it was contended, and laid down by several of the Judges, long after the cases adverted to were decided, that the fact of a man consenting to become a committee-man was one of importance, from which it might fairly be inferred that he knew how the committee was proceeding, and if it appeared that the person sought to be charged attended any meetings of the committee, or knew that the committee acted by a secretary, it was said to afford evidence for a jury that the defendant sanctioned what was done in the promotion of the scheme. It was held to be unnecessary to show that the committee-man gave any direct authority to the secretary to pledge his personal credit, because it might be assumed that those who acted on a committee gave implied authority to issue orders on their credit. The evidence, in a great majority of the cases brought before the Common Law Courts, was circumstantial, tending to show to what extent and in what cases the

<sup>1</sup> *Reynell v. Lewis*, and *Wyld v. Hopkins*, 15 Mees & Wels. 517.



defendant acted as a committee-man, and upon such evidence juries took opposite views and Judges formed very different impressions. In course of time, however, it came to be settled law, upon which all the Courts of Law in Westminster Hall acted, that there was no partnership between the members of a provisional committee, or the co-promoters of a company, and therefore no common power of binding each other merely by such a relation. In other words, that a provisional committee-man only became liable *by his own acts*.

The question so often discussed and decided with such varied results in the Courts of Law, came again before the Courts of Equity, when numerous inchoate undertakings, which proved unsuccessful or abortive, were brought under the consideration of these Courts to be dealt with under the Winding-up Acts. The question, whether a particular individual should be placed on the list of contributories, was constantly found to resolve itself into the question of fact,—did the alleged contributory make, or authorise to be made, the contract on which he was called upon to contribute, on his account jointly with others? In many of the cases brought before the Masters, to whom the delicate and difficult task was referred of settling the lists of contributories, it was argued that even where the alleged contributory was not responsible at Law, he might be in Equity; and in nearly every case the combination of facts which would render the party sought to be charged liable was a subject of discussion.

The question was at length brought before the House of Lords, in *Upfill's case*,<sup>2</sup> at a time when, in consequence of the illness of the late Lord Chancellor Cottenham, Lord Brougham presided over the judicial business of the House. Upfill was a provisional committee-man and had shares allotted to him by his own consent, which he accepted. Under such circumstances, the House of Lords decided that Mr. Upfill's name was properly inserted in the list of contributories. Very strong doubts were expressed by the Judges of the Courts of Equity, whether *Upfill's case* could have been rightly considered, but still, being a decision of the House of Lords, the Judges, when the same combination of circumstances arose, felt themselves bound by its authority. The question was again brought before the House of Lords, during the last Session, in a case of *Bright v. Hutton*,<sup>3</sup>

upon an appeal from an order of Vice-Chancellor Cranworth, confirming the report of the Master, under which Mr. Bright was called upon to pay a call of 10*l.* a share on 100 shares allotted to him as a provisional committee-man of an abortive railway company. The evidence upon which it was contended that Mr. Bright's name was properly placed on the list of contributories, was substantially similar to that upon which Mr. Upfill was declared to be liable, namely, that 100 shares had been placed at his disposal as a provisional committee-man, that he accepted the shares in that character, and paid a sum of 262*l.* 10*s.* as a deposit on the shares allotted. The Judges having been summoned, the question was put to them, whether upon the facts stated, there was sufficient evidence in an action at law to warrant a verdict, and the Judges unanimously replied, that but for the decision of the House in *Upfill's case*, the evidence would not have warranted a verdict in an action by an engineer or by a person employed to procure an Act of Parliament for the intended company. The Judges added, that whilst they considered the authority of that decision binding upon them, they desired to add, that if it had not been for that decision, they would all have thought there was not evidence to submit to a jury.

The Judges having stated their opinion that, independently of *Upfill's case*, there was no liability arising out of the facts rendering Mr. Bright responsible to a creditor for business done for the proposed company, the House, at the instance of the Lord Chancellor, and with the express consent of Lord Brougham, Lord Campbell, and Lord Cranworth, reversed the order which directed the payment of a call, and declared that Mr. Bright was not bound to contribute to the expenses of the company beyond the deposit he had actually paid.

In the judgment delivered by the Law Lords respectively, they concurred in treating *Upfill's case* as a mixed decision of law and fact, and they concurred in thinking that it ought not to govern the decision of the House in *Bright v. Hutton*, but an important question of constitutional law was incidentally mooted, upon which the Lord Chancellor and the Lord Chief Justice expressly differed. Lord St. Leonards considered the House of Lords as a Court of Justice, and that the power was inherent in

<sup>2</sup> 2 House of Lords Reports, p. 674.

<sup>3</sup> House of Lords, June 26. Reported as to

the question, whether the case fell within the Winding-up Acts, *ante*, p. 264.

every Court of Justice to correct any error into which it might have fallen. "You are bound" (said the Lord Chancellor) "by your own decisions as much as any Court would be bound,—that is to say,—you could not reverse your own decision in a particular case, but you are not bound by any rule of law which you may lay down, if, upon subsequent consideration, you find reason to differ from that rule." Lord Campbell, on the other hand, stated it to be his opinion, that "the House could not decide a thing as law to day, and decide differently the same thing as law to-morrow, because that would leave inferior tribunals and the rights of the subject in uncertainty." In his opinion, therefore, a judgment of the House laying down any position of law was binding until altered by an Act of Parliament.

The importance of the question thus referred to is obvious. The period may not be far distant when it may require to be definitively settled. At the same time it may safely be presumed that *Upfill's case* has lost much of, if not all, its weight as a binding authority, and that the more recent decision of the House of Lords in *Bright v. Hutton* will govern the future decisions both in the Courts of Law and Equity.<sup>4</sup>

## NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

### PATENT LAW AMENDMENT.

15 & 16 VICT. C. 83.

[Concluded from p. 316.]

30. The Commissioners shall cause to be printed, published, and sold, at such prices and in such manner as they may think fit, all specifications, disclaimers, and memoranda of alterations deposited or filed under this Act, and such specifications (not being provisional specifications), disclaimers, and memoranda respectively shall be so printed and published as soon as conveniently may be after the filing thereof respectively, and all such provisional specifications shall be so printed and published as soon as conveniently may be after the expiration of the provisional protection obtained in respect thereof; and it shall be lawful for the Commissioners to present copies of all such publications to such public libraries and museums as they may think fit, and to allow the person depositing or filing any such specifica-

tion, disclaimer, or memorandum of alteration to have such number, not exceeding 25, of the copies thereof so printed and published, without any payment for the same, as they may think fit.

31. It shall be lawful for the Lord Chancellor and the Master of the Rolls to direct the enrolment of specifications, disclaimers, and memoranda of alterations heretofore or hereafter enrolled or deposited at the Rolls Chapel Office, or at the Petty Bag Office, or at the Enrolment Office of the Court of Chancery, or in the custody of the Master of the Rolls as keeper of the public records, to be transferred to and kept in the office appointed for filing specifications in Chancery under this Act.

32. The Commissioners shall cause indexes to all specifications, disclaimers, and memoranda of alterations heretofore or to be hereafter enrolled or deposited as last aforesaid to be prepared in such form as they may think fit, and such indexes shall be open to the inspection of the public at such place or places as the Commissioners shall appoint, and subject to the regulations to be made by the Commissioners, and the Commissioners may cause all or any of such indexes, specifications, disclaimers, and memoranda of alterations to be printed, published, and sold in such manner and at such prices as the Commissioners may think fit.

33. Copies, printed by the printers to the Queen's Majesty, of specifications, disclaimers, and memoranda of alterations shall be admissible in evidence, and deemed and taken to be *prima facie* evidence of the existence and contents of the documents to which they purport to relate in all Courts and in all proceedings relating to letters patent.

34. There shall be kept at the office appointed for filing specifications in Chancery under this Act a book or books, to be called "The Register of Patents," wherein shall be entered and recorded in chronological order all letters patent granted under this Act, the deposit or filing of specifications, disclaimers, and memoranda of alterations filed in respect of such letters patent, all amendments in such letters patent and specifications, all confirmations and extensions of such letters patent, the expiry, vacating, or cancelling such letters patent, with the dates thereof respectively, and all other matters and things affecting the validity of such letters patent as the Commissioners may direct, and such register, or a copy thereof, shall be open at all convenient times to the inspection of the public, subject to such regulations as the Commissioners may make.

35. There shall be kept at the office appointed for filing specifications in Chancery under this Act a book or books, entitled "The Register of Proprietors," wherein shall be entered, in such manner as the Commissioners shall direct, the assignment of any letters patent, or of any share or interest therein, any license under letters patent, and the district to which such license relates, with the name and names of any person having any

<sup>4</sup> In a very late case *Ex parte Thorn*, Aug. 6, Lord Justice Cranworth intimated, that it had become the duty of the official managers to look over their lists, and remove or give notice they intend to remove the names of those who came within the overruling decision of the House of Lords in *Hutton v. Bright*.

share or interest in such letters patent or license, the date of his or their acquiring such letters patent, share, and interest, and any other matter or thing relating to or affecting the proprietorship in such letters patent or license; and a copy of any entry in such book, certified under such seal as may have been appointed or as may be directed by the Lord Chancellor to be used in the said office, shall be given to any person requiring the same, on payment of the fees hereinafter provided; and such copies so certified shall be received in evidence in all Courts and in all proceedings, and shall be *prima facie* proof of the assignment of such letters patent, or share or interest therein, or of the license or proprietorship, as therein expressed: Provided always, that until such entry shall have been made the grantee or grantees of the letters patent shall be deemed and taken to be the sole and exclusive proprietor or proprietors of such letters patent, and of all the licenses and privileges thereby given and granted; that certified duplicates of all entries made in the said register of proprietors shall forthwith be transmitted to the office of the Commissioners in Edinburgh and Dublin, where the same shall also be open to the inspection of the public; and any writ of *scire facias* to repeal such letters patent may be issued to the sheriff of the county or counties in which the grantee or grantees resided at the time when the said letters patent were granted; and in case such grantee or grantees do not reside in the United Kingdom it shall be sufficient to file such writ in the Petty Bag Office, and serve notice thereof in writing at the last known residence or place of business of such grantee or grantees; and such register or a copy shall be open to the inspection of the public at the office of the Commissioners, subject to such regulations as the Commissioners may make: Provided always, that in any proceeding in Scotland to repeal any letters patent service of all writs and summonses shall be made according to the existing forms and practice; provided also, that the grantee or grantees of letters patent to be hereafter granted may assign the letters patent for England, Scotland, or Ireland respectively as effectually as if the letters patent had been originally granted to extend to England or Scotland or Ireland only, and the assignees or assignees shall have the same rights of action and remedies, and shall be subject to the like actions and suits as he or they should and would have had and been subject to upon the assignment of letters patent granted to England, Ireland, or Scotland before the passing of this Act.

36. Notwithstanding any proviso that may exist in former letters patent, it shall be lawful for a larger number than twelve persons hereafter to have a legal and beneficial interest in such letters patent.

37. If any person shall wilfully make or cause to be made any false entry in the said register of proprietors, or shall wilfully make or forge, or cause to be made or forged, any

writing falsely purporting to be a copy of any entry in the said book, or shall produce or tender, or cause to be produced or tendered, in evidence any such writing, knowing the same to be false or forged, he shall be guilty of a misdemeanor, and shall be punished by fine and imprisonment accordingly.

38. If any person shall deem himself aggrieved by any entry made under colour of this Act in the said register of proprietors, it shall be lawful for such person to apply, by motion, to the Master of the Rolls, or to any of the Courts of Common Law at Westminster in Term time, or by summons to a Judge of any of the said Courts in Vacation, for an order that such entry may be expunged, vacated, or varied; and upon any such application the Master of the Rolls, or such Court or Judge respectively, may make such order for expunging, vacating, or varying such entry, and as to the costs of such application, as to the said Master of the Rolls or to such Court or Judge may seem fit; and the officer having the care and custody of such register, on the production to him of any such order for expunging, vacating, or varying any such entry, shall expunge, vacate, or vary the same, according to the requisitions of such order.

39. All the provisions of the Acts of the Session holden in the 5 & 6 Wm. 4, c. 83, and of the Session holden in the 7 & 8 Vict. c. 69, respectively, relating to disclaimers, and memoranda of alterations in letters patent and specifications, except as hereinafter provided, shall be applicable and apply to any letters patent granted, and to any specification filed under the provisions of this Act: Provided always, that all applications for leave to enter a disclaimer or memorandum of alteration shall be made, and all caveats relating thereto shall be lodged at the office of the Commissioners, and shall be referred to the respective law officers in the said first-recited Act mentioned: Provided also, that every such disclaimer or memorandum of alteration shall be filed in the office appointed for filing specifications in Chancery under this Act, with the specification to which the same relates, in lieu of being entered or filed and enrolled as required by the said first-recited Act, or by the Act of the Session holden in the 12 & 13 Vict. c. 109, and the said Acts shall be construed accordingly: Provided also, that such filing of any disclaimer or memorandum of alteration, in pursuance of the leave of the law officer in the first-recited Act mentioned, certified as therein mentioned, shall, except in cases of fraud, be conclusive as to the right of the party to enter such disclaimer or memorandum of alteration under the said Acts and this Act; and no objection shall be allowed to be made in any proceeding upon or touching such letters patent, specification, disclaimer, or memorandum of alteration, on the ground that the party entering such disclaimer or memorandum of alteration had not sufficient authority in that behalf: Provided also, that no action shall be brought upon any letters patent

in which or on the specification of which any disclaimer or memorandum of alteration shall have been filed in respect of any infringement committed prior to the filing of such disclaimer or memorandum of alteration, unless the law officer shall certify in his fiat that any such action may be brought, notwithstanding the entry or filing of such disclaimer or memorandum of alteration.

40. All the provisions of the said Act of the 5 & 6 W. 4, c. 83, for the confirmation of any letters patent, and the grant of new letters patent, and all the provisions of the said Act, and of the Acts of the Session holden in the 2 & 3 Vict. c. 67, and of the Session holden in the 7 & 8 Vict. c. 69, respectively, relating to the prolongation of the term of letters patent, and to the grant of new letters patent for a further term, shall extend and apply to any letters patent granted under the provisions of this Act, and it shall be lawful for her Majesty to grant any new letters patent, as in the said Acts mentioned; and in the granting of any such new letters patent her Majesty's order in council shall be a sufficient warrant and authority for the sealing of any new letters patent, and for the insertion in such new letters patent of any restrictions, conditions, and provisions in the said order mentioned; and the Lord Chancellor on the receipt of the said order in Council, shall cause letters patent, according to the tenor and effect of such order, to be made and sealed in the manner herein directed for letters patent issued under the warrant of the law officer: Provided always, that such new letters patent shall extend to and be available in and for such places as the original letters patent extended to and were available in: Provided also, that such new letters patent shall be sealed and bear date as of the day after the expiration of the term of the original letters patent which may first expire.

41. In any action in any of her Majesty's Superior Courts of Record at Westminster or in Dublin for the infringement of letters patent, the plaintiff shall deliver with his declaration particulars of the breaches complained of in the said action, and the defendant, on pleading thereto, shall deliver with his pleas, and the prosecutor in any proceedings by *scire facias* to repeal letters patent shall deliver with his declaration, particulars of any objections on which he means to rely at the trial in support of the pleas in the said action or of the suggestions of the said declaration in the proceedings by *scire facias* respectively; and at the trial of such action or proceeding by *scire facias* no evidence shall be allowed to be given in support of any alleged infringement or of any objection impeaching the validity of such letters patent which shall not be contained in the particulars delivered as aforesaid: Provided always, that the place or places at or in which and in what manner the invention is alleged to have been used or published prior to the date of the letters patent shall be stated in such particulars: Provided also, that it shall and may be lawful for any Judge at Chambers to

allow such plaintiff or defendant or prosecutor respectively to amend the particulars delivered as aforesaid, upon such terms as to such Judge shall seem fit: Provided also, that at the trial of any proceeding by *scire facias* to repeal letters patent the defendant shall be entitled to begin and to give evidence in support of such letters patent, and in case evidence shall be adduced on the part of the prosecutor impeaching the validity of such letters patent, the defendant shall be entitled to the reply.

42. In any action in any of her Majesty's Superior Courts of Record at Westminster and in Dublin for the infringement of letters patent, it shall be lawful for the Court in which such action is pending, if the Court be then sitting, or if the Court be not sitting then for a Judge of such Court, on the application of the plaintiff or defendant respectively, to make such order for an injunction, inspection, or account, and to give such direction respecting such action, injunction, inspection, and account, and the proceedings therein respectively, as to such Court or Judge may seem fit.

43. It taxing the costs in any action in any of her Majesty's Superior Courts at Westminster or in Dublin, commenced after the passing of this Act for infringing letters patent, regard shall be had to the particulars delivered in such action, and the plaintiff and defendant respectively shall not be allowed any costs in respect of any particular unless certified by the Judge before whom the trial was had to have been proved by such plaintiff or defendant respectively, without regard to the general costs of the cause; and it shall be lawful for the Judge before whom any such action shall be tried to certify on the record that the validity of the letters patent in the declaration mentioned came in question; and the record, with such certificate, being given in evidence in any suit or action for infringing the said letters patent, or in any proceeding by *scire facias* to repeal the letters patent, shall entitle the plaintiff in any such suit or action, or the defendant in such proceeding by *scire facias* on obtaining a decree, decretal order or final judgment, to his full costs, charges, and expenses, taxed as between attorney and client, unless the Judge making such decree or order, or the Judge trying such action or proceeding, shall certify that the plaintiff or defendant respectively ought not to have such full costs: Provided always, that nothing herein contained shall affect the jurisdiction and forms of process of the Courts in Scotland in any action for the infringement of letters patent or in any action or proceeding respecting letters patent hitherto competent to the said Courts; Provided also, that when any proceedings shall require to be taken in Scotland to repeal any letters patent, such proceedings shall be taken in the form of an action of reduction at the instance of her Majesty's Advocate, or at the instance of any other party having interest with concurrence of her Majesty's Advocate, which concurrence her Majesty's Advocate is authorised and empowered to give upon just cause shown only.

44. There shall be paid in respect of letters patent applied for or issued as herein mentioned, the filing of specifications and disclaimers, certificates, entries, and searches, and other matters and things mentioned in the schedule to this Act, such fees as are mentioned in the said schedule; and there shall be paid unto and for the use of her Majesty, her heirs and successors, for or in respect of the warrants and certificates mentioned in the said schedule, or the vellum, parchment, or paper on which the same respectively are written, the stamp duties mentioned in the said schedule; and no other stamp duties shall be levied, or fees, except as hereinafter mentioned, taken in respect to such letters patent and specifications, and the matters and things in such schedule mentioned.

45. The stamp duties hereby granted shall be under the care and management of the Commissioners of Inland Revenue; and the several rules, regulations, provisions, penalties, clauses, and matters contained in any Act now or hereafter to be in force with reference to stamp duties shall be applicable thereto.

46. The fees to be paid as aforesaid shall from time to time be paid into the receipt of the Exchequer, and be carried to and made part of the Consolidated Fund of the United Kingdom.

47. Provided always, that nothing herein contained shall prevent the payment as heretofore to the law officers in cases of opposition to the granting of letters patent, and in cases of disclaimers and memoranda of alterations, of such fees as may be appointed by the Lord Chancellor and Master of the Rolls as the fee, to be paid on the hearing of such oppositions, and in the case of disclaimers and memoranda of alterations respectively, or of such reasonable sums for office or other copies of documents in the office of the Commissioners, as the Commissioners may from time to time appoint to be paid for such copies, and the Lord Chancellor and Master of the Rolls, and the Commissioners, are hereby respectively authorised and empowered to appoint the fees to be so paid in respect of such oppositions, disclaimers, and memoranda of alterations respectively, and for such office or other copies.

48. It shall be lawful for the Commissioners of her Majesty's Treasury from time to time to allow such fees to the law officers and their clerks (for duties under this Act in respect of which fees may not be payable to them under the provisions lastly hereinbefore contained) as the Lord Chancellor and Master of the Rolls may from time to time appoint, and to allow such salaries and payments to any clerks and officers to be appointed under this Act, and such additional salaries and payments to any other clerks and officers in respect of any additional duties imposed on them by this Act, as the said Commissioners of the Treasury may think fit.

49. It shall be lawful for the Commissioners of her Majesty's Treasury to allow from time to time the necessary sums for providing offices under this Act, and for the fees, sala-

ries, and payments allowed by them as aforesaid, and for defraying the current and incidental expenses of such office or offices; and the sums to be so allowed shall be paid out of such monies as may be provided by Parliament for that purpose.

50. And whereas divers persons by virtue of their offices or appointments are entitled to fees or charges payable in respect of letters patent as heretofore granted within the United Kingdom of Great Britain and Ireland, or have and derive in respect of such letters patent, or the procedure for the granting thereof, fees or other emoluments or advantages:

It shall be lawful for the said Commissioners of the Treasury to grant to any such persons who may sustain any loss of fees, emoluments, or advantages by reason of the passing of this Act, such compensation as, having regard to the tenure and nature of their respective offices and appointments, such Commissioners deem just and proper to be awarded; and all such compensations shall be paid out of such monies as may be provided by Parliament for that purpose: Provided always, that in case any person to whom any yearly sum by way of compensation shall be awarded and paid shall, after the passing of this Act, be appointed to any office or place of emolument under the provisions of this Act, or in the public service, then and in every such case the amount of such yearly sum shall in every year be diminished by so much as the emoluments of such person for such year from such office or place shall amount to, and provision in that behalf shall be made in the award to him of such yearly sum.

51. An account of all salaries, fees, allowances, sums, and compensations to be appointed, allowed, or granted under this Act shall, within 14 days next after the same shall be so appointed, allowed, or granted respectively, be laid before both Houses of Parliament, if Parliament be then sitting, or if Parliament be not then sitting, then within 14 days after the next meeting of Parliament.

52. Letters patent may be granted in respect of applications made before the commencement of this Act, in like manner and subject to the same provisions as if this Act had not been passed.

53. Where letters patent for England or Scotland or Ireland have been granted before the commencement of this Act, or are in respect of any application made before the commencement of this Act hereafter granted for any invention, letters patent for England or Scotland or Ireland may be granted for such invention in like manner as if this Act had not been passed: Provided always, that in lieu of all the fees or payments and stamp duties now payable in respect of such letters patent, or in or about obtaining a grant thereof, there shall be paid in respect of such letters patent for England or Scotland or Ireland on the sealing of such respective letters patent a sum equal to one-third part of the fees and stamp duties which would be payable according to

the schedule to this Act in respect of letters patent issued for the United Kingdom under this Act, on or previously to the sealing of such letters patent; and at or before the expiration of the third year and the seventh year respectively of the term granted by such letters patent for England or Scotland or Ireland, sums equal to one-third part of the fees and stamp duties payable at the expiration of the third year and the seventh year respectively of the term granted by letters patent issued for the United Kingdom under this Act; and the condition of such letters patent for England or Scotland or Ireland shall be varied accordingly; and such fees shall be paid to such persons as the Commissioners of her Majesty's Treasury shall appoint, and shall be carried to and form part of the said Consolidated Fund.

54. The several forms in the Schedule to this Act may be used for and in respect of the several matters therein mentioned, and the Commissioners may, where they think fit, vary such forms as occasion may require, and cause to be printed and circulated such other forms as they may think fit to be used for the purposes of this Act.

55. In the construction of this Act the following expressions shall have the meanings hereby assigned to them, unless such meanings be repugnant to or inconsistent with the context; (that is to say,)

The expression "Lord Chancellor" shall mean the Lord Chancellor, or Lord Keeper of the Great Seal, or Lords Commissioners of the Great Seal:

The expression "The Commissioners" shall mean the Commissioners for the time being acting in execution of this Act:

The expression "Law Officer" shall mean her Majesty's Attorney-General or Solicitor-General for the time being for England, or the Lord Advocate, or her Majesty's Solicitor-General for the time being for Scotland, or her Majesty's Attorney-General or Solicitor-General for the time being for Ireland:

The expression "Invention" shall mean any manner of new manufacture the subject of letters patent and grant of privilege within the meaning of the Act of the 21 Jac. 1, c. 3:

The expressions "Petition," "Declaration," "Provisional Specification," "Warrant," and "Letters Patent," respectively, shall mean instruments in the form and to the effect in the Schedule hereto annexed, subject to such alterations as may from time to time be made therein under the powers and provisions of this Act.

56. In citing this Act in other Acts of Parliament, instruments, and proceedings, it shall be sufficient to use the expression, "The Patent Law Amendment Act, 1852."

57. This Act shall commence and take effect from the 1st day of October, 1852.

**THE SCHEDULE TO WHICH THIS ACT REFERS.**

*Fees to be paid.*

|                                                                  | £  | s. | d. |
|------------------------------------------------------------------|----|----|----|
| On leaving petition for grant of letters patent . . . . .        | 5  | 0  | 0  |
| On notice of intention to proceed with the application . . . . . | 5  | 0  | 0  |
| On sealing of letters patent . . . . .                           | 5  | 0  | 0  |
| On filing specification . . . . .                                | 5  | 0  | 0  |
| At or before the expiration of the third year . . . . .          | 40 | 0  | 0  |
| At or before the expiration of the seventh year . . . . .        | 80 | 0  | 0  |
| On leaving notice of objections . . . . .                        | 2  | 0  | 0  |
| Every search and inspection . . . . .                            | 0  | 1  | 0  |
| Entry of assignment or licence . . . . .                         | 0  | 5  | 0  |
| Certificate of assignment or licence . . . . .                   | 0  | 5  | 0  |
| Filing application for disclaimer . . . . .                      | 5  | 0  | 0  |
| Caveat against disclaimer . . . . .                              | 2  | 0  | 0  |

*Stamp Duties to be paid.*

|                                                                                                        |    |   |   |
|--------------------------------------------------------------------------------------------------------|----|---|---|
| On warrant of law officer for letters patent . . . . .                                                 | 5  | 0 | 0 |
| On certificate of payment of the fee payable at or before the expiration of the third year . . . . .   | 10 | 0 | 0 |
| On certificate of payment of the fee payable at or before the expiration of the seventh year . . . . . | 20 | 0 | 0 |

**FORMS.**

*Petition.*

No.

To the Queen's most Excellent Majesty.

The humble petition of [*here insert name and address of petitioner*] for, &c.

Sheweth,

That your petitioner is in possession of an invention for

[*the title of the invention*],

which invention he believes will be of great public utility; that he is the true and first inventor thereof; and that the same is not in use by any other person or persons, to the best of his knowledge and belief.

Your petitioner therefore humbly prays, that your Majesty will be pleased to grant unto him, his executors, administrators, and assigns, your royal letters patent for the United Kingdom of Great Britain and Ireland, the Channel Islands, and Isle of Man [*colonies to be mentioned, if any*], for the term of 14 years, pursuant to the statutes in that case made and provided.

And your petitioner will ever pray, &c.

No.

*Declaration.*

I of in the county of do solemnly and sincerely declare, that I am in possession of an invention for, &c.

[*the title as in petition*],

which invention I believe will be of great public utility; that I am the true and first inventor thereof; and that the same is not in use by any other person or persons, to the best of my knowledge and belief; [*where a complete specification is to be filed with the petition and declaration*]

tion, insert these words:—"and that the instrument in writing under my hand and seal, hereunto annexed, particularly describes and ascertains the nature of the said invention and the manner in which the same is to be performed;" and I make this declaration conscientiously believing the same to be true, and by virtue of the provisions of an Act made and passed in the Session of Parliament held in the 5 & 6 Wm. 4, intituled "An Act to repeal an Act of the present Session of Parliament, intituled 'An Act for the more effectual Abolition of Oaths and Affirmations taken and made in various departments of the State, and to substitute declarations in lieu thereof, and for the more entire Suppression of voluntary and extra-judicial Oaths and Affidavits,' and to make other Provisions for the Abolition of unnecessary Oaths." A. B.

Declared at this day of  
A.D. before me,  
A Master in Chancery,  
or  
Justice of the Peace.

#### Provisional Specification.

No. I do hereby declare the nature of the said invention for  
[insert title as in petition],  
to be as follows:

[here insert description].  
Dated this day of A.D. .  
(To be signed by applicant or his agent.)

#### Reference.

(To be endorsed on the petition).

Her Majesty is pleased to refer this petition to consider what may be properly done therein.

Clerk of the Commissioners.

#### Warrant.

In humble obedience to her Majesty's command referring to me the petition of of , to consider what may be properly done therein, I do hereby certify as follows; That the said petition sets forth that the petitioner

[Allegations of the petition].

And the petitioner most humbly prays,

[Prayer of the petition.]

That in support of the allegations contained in the said petition, the declaration of the petitioner has been laid before me, whereby he solemnly declares, that

[Allegations of the declaration].

That there has also been laid before me [a provisional specification signed , and also a certificate ], or [a complete specification, and a certificate of the filing thereof], whereby it appears that the said invention was provisionally protected [or protected] from the day of A.D.

in pursuance of the statute:

That it appears that the said application was duly advertised:

Upon consideration of all the matters aforesaid, and as it is entirely at the hazard of the said petitioner whether the said invention is new or will have the desired success, and as it may be reasonable for her Majesty to encourage all arts and inventions which may be for the public good, I am of opinion, that her Majesty may grant her royal letters patent unto the petitioner, his executors, administrators, and assigns, for his said invention within the United Kingdom of Great Britain and Ireland, the Channel Islands, and Isle of Man [colonies to be mentioned, if any], for the term of 14 years, according to the statute in that case made and provided, if her Majesty shall be graciously pleased so to do, to the tenor and effect following:

[See next form].

Given under my hand, this day of A.D.  
Seal of the Commissioners.

#### Letters Patent.

Victoria, by the grace of God, of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith; To all to whom these presents shall come greeting:

Whereas hath by his petition humbly represented unto us that he is in possession of an invention for which the petitioner conceives will be of great public utility; that he is the true and first inventor thereof; and that the same is not in use by any other person or persons, to the best of his knowledge and belief: The petitioner therefore most humbly prayed that we would be graciously pleased to grant unto him, his executors, administrators, and assigns, our royal letters patent for the sole use, benefit, and advantage of his said invention within our United Kingdom of Great Britain and Ireland, the Channel Islands, and Isle of Man [colonies to be mentioned, if any], for the term of 14 years, pursuant to the statutes in that case made and provided:

[And whereas the said hath particularly described and ascertained the nature of the said invention, and in what manner the same is to be performed, by an instrument in writing under his hand and seal, and has caused the same to be duly filed in ]:

And we, being willing to give encouragement to all arts and inventions which may be for the public good, are graciously pleased to condescend to the petitioner's request: Know ye, therefore, that we, of our especial grace, certain knowledge, and mere motion, have given and granted, and by these presents, for us, our heirs and successors, do give and grant unto the said his executors, administrators, and assigns, our especial licence, full power, sole privilege, and authority, that he the said , his executors, administrators, and assigns, and every of them, by himself and themselves, or by his and their deputy or deputies, servants or agents, or such others as he the said his executors, administrators, or assigns, shall at any time agree with, and no others; from time to time and at

all times hereafter during the term of years herein expressed, shall and lawfully may make, use, exercise, and vend his said invention within our United Kingdom of Great Britain and Ireland, the Channel Islands, and Isle of Man, in such manner as to him the said , his executors, administrators, and assigns, or any of them, shall in his or their discretion seem meet; and that he the said , his executors, administrators, and assigns, shall and lawfully may have and enjoy the whole profit, benefit, commodity, and advantage from time to time coming, growing, accruing, and arising by reason of the said invention, for and during the term of years herein mentioned; to have, hold, exercise, and enjoy the said licences, powers, privileges, and advantages hereinbefore granted or mentioned to be granted unto the said , his executors, administrators, and assigns, for and during and unto the full end and term of 14 years from the day of A.D.

next and immediately ensuing, according to the statute in such case made and provided; and to the end that he the said , his executors, administrators, and assigns, and every of them, may have and enjoy the full benefit and the sole use and exercise of the said invention, according to our gracious intention hereinbefore declared, we do by these presents, for us, our heirs and successors, require and strictly command all and every person and persons, bodies politic and corporate, and all other our subjects whatsoever, of what estate, quality, degree, name, or condition soever they be, within our United Kingdom of Great Britain and Ireland, the Channel Islands, and Isle of Man, [colonies to be mentioned, if any], that neither they nor any of them, at any time during the continuance of the said term of 14 years hereby granted, either directly or indirectly do make, use, or put in practice the said invention, or any part of the same, so attained unto by the said , as aforesaid, nor in anywise counterfeit, imitate, or resemble the same, nor shall make or cause to be made any addition thereunto or subtraction from the same, whereby to pretend himself or themselves the inventor or inventors, deviser or devisors thereof without the consent, licence, or agreement of the said , his executors, administrators, or assigns, in writing under his or their hands and seals first had and obtained in that behalf, upon such pains and penalties as can or may be justly inflicted on such offenders for their contempt of this our royal command, and further to be answerable to the said , his executors, administrators, and assigns, according to law, for his and their damages thereby occasioned: And moreover we do by these presents, for us, our heirs and successors, will and command all and singular the justices of the peace, mayors, sheriffs, bailiffs, constables, head-boroughs, and all other officers and ministers whatsoever of us, our heirs and successors, for the time being, that they or any of them do not nor shall at any time during the said term hereby granted in anywise molest, trouble, or

hinder the said , his executors, administrators, or assigns, or any of them, or his or their deputies, servants, or agents, in or about the due and lawful use or exercise of the aforesaid invention, or anything relating thereto: Provided always, that these our letters patent are and shall be upon this condition, that if at any time during the said term hereby granted it shall be made appear to us, our heirs or successors, or any six or more of our or their privy council, that this our grant is contrary to law, or prejudicial or inconvenient to our subjects in general, or that the said invention is not a new invention as to the public use and exercise thereof, or that the said is not the true and first inventor thereof within this realm as aforesaid, these our letters patent shall forthwith cease, determine, and be utterly void to all intents and purposes, anything hereinbefore contained to the contrary thereof in anywise notwithstanding: Provided also, that these our letters patent, or anything herein contained, shall not extend or be construed to extend to give privilege unto the said , his executors, administrators, or assigns, or any of them, to use or imitate any invention or work whatsoever which hath heretofore been found out or invented by any other of our subjects whatsoever, and publicly used or exercised, unto whom our like letters patent or privileges have been already granted for the sole use, exercise, and benefit thereof: It being our will and pleasure that the said , his executors, administrators, and assigns, and all and every other person and persons to whom like letters patent or privileges have been already granted as aforesaid, shall distinctly use and practise their several inventions by them invented and found out, according to the true intent and meaning of the same respective letters patent and of these presents: Provided likewise, nevertheless, and these our letters patent are upon this express condition, [that if the said shall not particularly describe and ascertain the nature of his said invention, and in what manner the same is to be performed, by an instrument in writing under his hand and seal, and cause the same to be filed in within calendar months next and immediately after the date of these our letters patent:] [and also if the said instrument in writing filed as aforesaid does not particularly describe and ascertain the nature of the said invention, and in what manner the same is to be performed:] and also if the said , his executors, administrators, or assigns shall not pay or cause to be paid at the office of our Commissioners of Patents for Inventions the sums following, that is to say, the sum of pounds on or before the day of A.D. , and the stamp duty payable in respect of the certificate of such payment, and the sum of pounds on or before the day of A.D. , and the stamp duty payable in respect of the certificate of such payment; and also if the said , his executors, administra-



tors, or assigns, shall not supply or cause to be supplied for our service all such articles of the said invention as he or they shall be required to supply by the officers or Commissioners administering the department of our service for the use of which the same shall be required, in such manner, at such times, and at and upon such reasonable prices and terms as shall be settled for that purpose by the said officers or Commissioners requiring the same; that then and in any of the said cases these our letters patent, and all liberties and advantages whatsoever hereby granted, shall utterly cease, determine, and become void, anything hereinbefore contained to the contrary thereof in anywise notwithstanding: Provided that nothing herein contained shall prevent the granting of licences in such manner and for such considerations as they may by law be granted; and lastly, we do by these presents, for us, our heirs and successors, grant unto the said \_\_\_\_\_, his executors, administrators, and assigns, that these our letters patent, or the filing thereof, shall be in and by all things good, firm, valid, sufficient, and effectual in the law according to the true intent and meaning thereof, and shall be taken, construed, and adjudged in the most favourable and beneficial sense for the best advantage of the said \_\_\_\_\_, his executors, administrators, and assigns, as well in all our Courts of Record as elsewhere, and by all and singular the officers and ministers whatsoever of us, our heirs and successors, in our united Kingdom of Great Britain and Ireland, the Channel Islands, and Isle of Man [colonies to be mentioned, if any], and amongst all and every the subjects of us, our heirs and successors, whatsoever and wheresoever, notwithstanding the not full and certain describing the nature or quality of the said invention, or of the materials thereunto conducing and belonging. In witness whereof we have caused these our letters to be made patent, this \_\_\_\_\_ day of \_\_\_\_\_, A.D. \_\_\_\_\_, and to be sealed and bear date as of the said \_\_\_\_\_ day of \_\_\_\_\_, A.D. \_\_\_\_\_ in the \_\_\_\_\_ year of our reign.

#### Specification.

To all to whom these presents shall come;  
I, \_\_\_\_\_, of \_\_\_\_\_, send greeting:  
Whereas her most excellent Majesty Queen Victoria, by her letters patent bearing date the \_\_\_\_\_ day of \_\_\_\_\_, A.D. \_\_\_\_\_, in the \_\_\_\_\_ year of her reign, did for herself, her heirs and successors, give and grant unto me the said \_\_\_\_\_ her special licence that I the said \_\_\_\_\_, my executors, administrators, and assigns, or such others as I the said \_\_\_\_\_, my executors, administrators, and assigns, should at any time agree with, and no others, from time to time and at all times thereafter during the term therein expressed, should and lawfully might make, use, exercise, and vend, within the United Kingdom of Great Britain and Ireland, the Channel Islands, and Isle of Man [colonies to be mentioned,

if any], an invention for \_\_\_\_\_ [insert title as in letters patent] upon the condition (amongst others) that I the said \_\_\_\_\_, by an instrument in writing under my hand and seal, should particularly describe and ascertain the nature of the said invention, and in what manner the same was to be performed, and cause the same to be filed in \_\_\_\_\_ within \_\_\_\_\_ calendar months next and immediately after the date of the said letters patent: Now know ye, that I the said \_\_\_\_\_, do hereby declare the nature of my said invention, and in what manner the same is to be performed, to be particularly described and ascertained in and by the following statement; (that is to say,) [describe the invention].

In witness whereof I the said A. B. have heretofore set my hand and seal, this \_\_\_\_\_ day of \_\_\_\_\_, A.D. \_\_\_\_\_.

A. B.

#### NOTICES OF NEW BOOKS.

*Remarks upon Notarial Evidence; with Illustrations from the Cases bearing on the Subject, including that of Achilli v. Newman, as well as from the Statute Law and other sources.* By ALEXANDER RIDGWAY, Notary. London: Stevens & Norton; Effingham Wilson. 1852.

THIS is an able and zealous pamphlet in favour of the reception of notarial certificates as evidence in our Superior Courts, and particularly in the Courts of Chancery. The recent case of *Achilli v. Newman*, in which the certificate of a notary at Rome was admitted in evidence by the Lord Chief Justice, is prominently noticed by Mr. Ridgway, who sets forth the document in the original language, and adds the following remarks:—

“The document in question was not strictly a judgment of the Inquisition (as it was first designated), nor even a copy of the proceedings of that Court; but ‘the first portion of it’ (to use Lord Campbell’s words) ‘merely stated the result to which the notary who drew it up had come,’ after what he terms ‘a complete investigation of the proceedings instituted in the Holy Office against Father Hyacinth Achilli.’

“It may have been styled a judgment of the Inquisition, with a view to its being admitted as evidence under the 7th section of the Law of Evidence Amendment Act, 14 & 15 Vict. c. 99; but the cases hereafter referred to afford another claim to its reception, namely, as a notarial certificate.

“Although it was, after much opposition, admitted, Lord Campbell, upon more minute inspection of this instrument, remarked:—‘It was not in the form of a judgment. He should have hesitated more in receiving it if he had been made more acquainted with the cam-

mentement; but, as it was, he did not regret having admitted it, as he felt disposed to open the door as widely as possible, so as to admit evidence that might throw light on the issue.'

"The Attorney-General's remarks were as follow:—'He now came, in the last place, to that extraordinary document which emanated from the Holy Inquisition. He quite agreed in the propriety of admitting that document *quantum valeat*; for there was a plea that Dr. Achilli had been pronounced guilty by the Inquisition, and that punishment had been awarded him in consequence. It was the first time that such a judgment had been put in evidence in this country, and he trusted it would be the last. In 1851, Mr. Harting went to Rome, and in some way or other a person whom Mr. Harting wished to shroud in mystery, interfered and obtained the judgment; this was Monsignor Talbot, the Pope's secretary, and Mr. Harting thought it would be prejudicial to the case to reveal that fact. So secret were the proceedings of the Court, that even a gentleman, now a bishop of the church, who went for papers, was not allowed to enter, but the clerk delivered them to him. There was no examination of copies with originals, and in fact they did not know whether such originals existed at all. The document referred to was not a copy of proceedings, but an account by the notary of what the proceedings contained,' &c.

"Lord Campbell (according to the *Herald's* report) then said:—'I must take it that such a sentence was pronounced, but I cannot take that as a proof of the preceding fact.'

"In other words, we may interpret his lordship's meaning. 'It is not a judgment; and as a notarial certificate, it simply proves there was a judgment, but not the justice of that judgment.' In the charge he declared, in answer to objections raised:—'That the certificate was not only admissible evidence, but very strong evidence,' and the jury by their verdict confirmed this view, for out of the twenty-three justifications of the alleged libel pleaded by Dr. Newman, one alone was by the jury deemed proved, and that one wholly and solely rested upon *Angelus Argenti's* notarial certificate."

We incline to think that this precedent itself would go but a short way towards the conclusion at which the learned notary would arrive. It appears to be merely a report from the notary of the result of proceedings in the Court of Inquisition at Rome, but not a copy of the judgment, still less of the recital of facts or grounds on which the judgment was pronounced. The paper might be admissible under the peculiar circumstances of the case. It was alleged by Dr. Newman that a judgment had been pronounced by the Inquisition at Rome against Achilli, and the existence of the judgment might be proved by the notarial certificate; but it did not prove the

truth or justice of the judgment, which, we presume, was the real question in issue.

Mr. Ridgway states concisely and accurately the several decisions of our Courts of Law and Equity on the tender or reception of notarial documents. He next proceeds to the Statutes bearing on the subject, viz., the 5 & 6 Wm. 4, c. 62; the 8 & 9 Vict. c. 99; the 8 & 9 Vict. c. 113; and the 12 & 13 Vict. c. 106. And we are then presented with the following summary of the rules for which the author contends:—

"That in mercantile transactions a notarial certificate is sufficient.—*Sweeting v. Sweeting*; *Burt v. Jones*.

"That a notarial certificate should be made under seal, and that where a notarial seal is by any rule of Court required, and there is not proof that no public seal is used by the notaries of the place where the certificate is dated, it will not be received.—*Cruttenden v. Bourbell*.

"That the facts certified by a notarial attestation must be direct, and not to be gathered from inference.—*Laidlaw v. Coz*.

"That a notarial certificate will, by direct evidence contained therein, supply an important defect in a document to which it refers.—*Hinde v. Hinde*.

"That a notarial certificate is proof of the truth of copies, because 'a notary public by the law of nations has credit everywhere, and the Court of Chancery will therefore give credit to him.'—*Hutcheon v. Mannington*.

"That a notarial certificate is proof of the execution of a power of attorney.—*Kinnaird v. Saltoun*; *Garvey v. Hibbert*.

"That an instrument granted by a notary at Paris will be received in Chancery, on the signature of the notary being proved by affidavit.—*Kinnaird v. Saltoun*.

"That a notarial signature has been required to be verified by affidavit when such affidavit was known to be easily obtainable.—*Kinnaird v. Saltoun*.

"That a notarial certificate is admissible in Chancery when the signature of the notary is verified by the certificate of the clerk of a United States Circuit Court, countersigned by the American Secretary of State.—*Garvey v. Hibbert*.

"That a notarial instrument is admissible in Chancery when the signature of the notary is countersigned by the chief magistrate of the district.—*Kinnaird v. Saltoun*.

"That a certificate granted by the mayor of an American town is not sufficient evidence without 'something further.'—*Garvey v. Hibbert*.

"That a certificate by a governor of a British possession abroad does not prove itself.—*Hutcheon v. Mannington*.

"That a notarial certificate does not (in *Sir Richard Kindersley's* Court) prove the signature of a J. P. in Van Diemen's land, nor that an affidavit was sworn before a J. P. in Guernsey.

"That according to a reported decision of Sir Richard Kindersley, a notarial certificate granted in Van Diemen's Land is of no value in England!!—*Burt v. Jones*.

"That the evidence of a notary is as perfectly good as that of any other person.—*Burt v. Jones*.

"That a notarial certificate proves the truth of a translation in the Court of Chancery.—*Davis v. Davis*.

"That a British consul's certificate proves itself in Chancery, because equal to a notary's.—*Robinson's case*.

"That a notarial copy granted in a foreign country is not admissible in English Courts where it would not be admissible in such country.—*Brown v. Thornton*.

"That a notarial copy is admissible in English Courts as secondary evidence where the original documents cannot be obtained.—*Achilli v. Newman*; *Atton v. Furnival*; *Walrond v. Van Moses*.

"That notaries are authorised to receive statutory declarations.—5 & 6 Wm. 4, c. 62.

"That such declarations made before, and certified under the seal of a notary in England, are proof in actions brought in the colonies.—5 & 6 Wm. 4, c. 62, s. 15.

"That affidavits of persons abroad in English bankruptcies shall and may be 'sworn before a magistrate and attested by a notary.'—12 & 13 Vict. c. 106, s. 243.

"That a certified extract from a notarial register is admissible in evidence and proves itself.—14 & 15 Vict. c. 99, s. 14.

"That a notary is bound to furnish certified copies and extracts from his register.—14 & 15 Vict. c. 99, s. 14.

"That it is a misdemeanor for a notary to grant a false certified copy.—14 & 15 Vict. c. 99, s. 15.

"That a notary is authorised to administer an oath.—14 & 15 Vict. c. 99, s. 16, and *immemorial custom*.

"That a notary is a *public officer*, and his case is like any other case of a public officer.—*Lord Abinger*.

"That a notarial certificate is admissible in Chancery and proves itself.—*Hutcheon v. Mannington*; *Davis v. Davis*; *Robinson's case*.

"That in commerce and transactions with parts beyond sea a notarial certificate proves itself.—*C. J. Holt*; *C. J. Ley*.

"That a certificate of a notary at Hamburg proves itself.—*Heathcock v. Hanbury*.

"That a certificate of a notary at Prince of Wales's Island proves itself.—*Hutcheon v. Mannington*.

"That all statutory notarial evidence proves itself.—8 & 9 Vict. c. 113, s. 1."

Postscripts are often very valuable parts of certain epistles. So here, the postscript to the present pamphlet notices the last Statute 15 & 16 Vict. c. 86, for the Improvement of the Jurisdiction in Equity, the 22nd, 23rd, and 24th sections of which are hailed by the author as containing a

peculiar and unexpected confirmation of his views. These clauses are, we believe, mainly owing to suggestions made by the Incorporated Law Society, and provide that *judicial notice* shall be taken by the Court of Chancery of the seal or signature of any Court, Judge, *notary public*, consul, &c. We are glad, therefore, that the grievance of the learned notary and tabellion public has been redressed.

There are some remarks in the pamphlet on the respective provinces of attorneys and notaries, to which we may advert on a future occasion.

## CROSS-EXAMINATION OF WITNESS.

### LETTER NOT PRODUCED.

In an action on a bill of exchange, the defence relied upon was the forgery of the acceptance by one Peter Scott. In the course of the cause, Scott was put into the witness-box to prove that the acceptance was in the handwriting of the defendant. On cross-examination for the defendant, a letter was put into the witness's hand, and he was asked the following question,—*"Did you not write that letter in answer to a letter charging you with forgery?"*

It was objected that the letter referred to ought to be produced, on the other hand it was contended that the question might be put without producing the letter, because the object of it was to test the credibility of the witness, and not to establish any fact in the cause. The distinction was reasonable, for a party might be supposed to come prepared to prove or answer the material parts of a case, but it was impossible for him to be ready to meet any witness who might be produced against him. It was a common course to ask a witness on cross-examination, in order to test his credit, if he has made such and such statements to a third party, and if he denies that he has, to call such party to contradict him, provided at least the matter is relevant to the issue. Without some such relaxations of the strict rule, it would be impracticable effectually to test the credit or memory of witnesses.

*Jervis, C. J.*, held that the question was inadmissible, unless the letter referred to were produced, or its absence duly accounted for. The rule of law was, that the best evidence must be produced, and the answer to the question would be giving secondary evidence of the contents of the letter. As to allowing the question to be put with a view merely of testing the veracity of the witness, the *Queen's case*, 2

Br. & B. 286, decided that such a course could not be pursued. Verdict for the plaintiff. A rule for a new trial was afterwards obtained, but, after argument, discharged. *M'Donnell v. Evans*, 3 C. & K. 51.

## INCORPORATED LAW SOCIETY.

### ANNUAL REPORT.

[Concluded from p. 318, ante.]

#### V. MAL-PRACTICE CASES.

During the past year the Council have had under their consideration upwards of thirty cases of alleged mal-practice, in several of which it was necessary to examine very voluminous papers and evidence. Six of the cases have been submitted to the Court, or the Judge at Chambers; in one of which the person complained of has been struck off the Roll; in another, a rule nisi has been granted; and some are still pending. In others, the investigations into the evidence in support of the complaints are still in progress, preparatory to the requisite applications to the Court; and several have not been deemed within the province of the Society, or towards the prosecution of which the Council did not feel themselves justified in applying the Funds of the Society.

#### VI. RENEWAL OF CERTIFICATES.

The applications for the renewal of the certificates of attorneys after having ceased to practise for more than twelvemonths, have been numerous each Term. These cases require particular attention, inasmuch as many of the applicants are liable to objection for practising without a certificate, and frequently for misconduct. The affidavits in support of the applications are received from the Lord Chief Justice, and undergo a careful examination. The names and addresses of the parties are sent to all the Law Societies in the country, and placed up in the Courts and public offices.

They have also, where the applicant has left the Profession entirely, and then engaged in other pursuits, suggested the propriety of a re-examination; and this, in several instances, has been directed. The general regulation made by the Judges is, that where the applicant had been long in practice, though he had ceased for some years, no examination would be required; but where an attorney had practised for a short time only, and then left the Profession for a considerable period, an examination would be ordered.

The Judges have been in the habit, in certain cases, of relaxing the rule of Court, which requires notice to be given before the Term in which the application is intended to be made. The Council suggested to the Judges that the applicants should be required to serve a summons on the registrar of attorneys to show cause within such time as the Judge might deem proper, why the certificate should not be

issued, in order that due inquiries might be made into the conduct and character of the applicants; and the Judges accordingly directed on these applications that a preliminary order should be granted, requiring notice to be entered in the Judge's books; and the affidavits in support of the application, to be sent for examination ten days before the certificate is issued.

This regulation will apply to all cases of the renewal of certificates; but where the party applies for his first certificate, and shows that he is about to enter into a partnership, or where, for other urgent reasons, the ten days' delay may be prejudicial, a shorter time will be fixed; but which the Judge will enlarge if the Society should require further time for inquiry.

These arrangements appear to the Council to be sufficient for preventing the renewed admission to practice of improper persons.

They have also suggested to the Judges, that where attorneys have wilfully continued to practise without their certificates, an adequate fine should be imposed in addition to the payment of the arrears, inasmuch as so long as the Certificate Tax continues, it ought to be paid by all persons in actual practice.

#### VII. ENCROACHMENTS ON THE PROFESSION.

The attention of the Council has been called to some instances of objectionable practice by certificated conveyancers and notaries public, who were alleged to have exceeded their legitimate province. These matters have been investigated; and in regard to certificated conveyancers, application has again been made to the benchers of one of the Inns of Court to prevent these irregularities of persons practising under the Bar.

Several complaints have also been made of house agents, auctioneers, and accountants acting in matters usually intrusted to Solicitors; but it did not appear in the transactions in question, that the parties could be brought within the prohibitions of the Attorneys' and Solicitors' Act, or the provisions of the Stamp Acts.

#### VIII. THE EXAMINATION.

The mode of conducting the examination hitherto adopted by the Examiners, has been to prepare questions on the principles and practice of Common Law, Conveyancing, Equity, Bankruptcy and Criminal Law, and Proceedings before Magistrates. The Examiners require that a majority at least of such questions should be sufficiently answered by the candidate for admission in Common Law and Equity, and also in one of the three other departments; thus making a satisfactory examination in Law and Equity indispensable, but leaving it optional with the candidates to answer, or not to answer, the questions in conveyancing.

Looking, however, at the great importance to the community that attorneys and solicitors should be well acquainted with the Laws of Property, and qualified to prepare and superintend the due execution of wills, deeds, and

other instruments, the Examiners consider it desirable to require the candidates in future to pass a satisfactory examination in this department also, if such regulation should receive the approval of the Judges; and the Council have presented a memorial for that purpose.

The Examiners propose still to continue the practice of preparing questions in Bankruptcy and in Criminal Law, and Proceedings before the Magistrates, in order that candidates, who may have served their clerkship in offices practising in those branches, may have the advantage of answering such questions, and having their proficiency in that department taken into consideration in summing up the merit of their general examination.

If the proposed alteration should meet with the sanction of the Judges, the Examiners propose to give six months' notice before carrying the same into effect.

It may be proper here to advert to some instances in which objections have been taken to the mode of service of the articles of clerkship, in order that the provisions of the Statute, and the regulations of the Judges, may be adhered to. In some of these cases it has been objected that the attorney having two places of business, the one in town, and the other in the country, has confided the professional business at one of the offices chiefly to his articled clerk, whilst he managed the business of the other office personally. The Judges hold that there must be an actual superintendence of the attorney over the clerk during his term of service, and that the provisions of the Act are not complied with by occasional communications between the attorney and clerk. There must be a *bona fide* service by the clerk during the whole term to the attorney in his proper business of an attorney.

Arising out of this defective mode of service, instances have occurred of an illegal nature—namely, a division of profits between the attorney and the unqualified person acting as his articled clerk. The clerk being a person of experience, and possessing some influence in the locality, has arranged with an attorney living at some distance to open an office, the business being almost entirely conducted by the clerk; and the arrangement or understanding has been, that the clerk shall be paid a salary proportioned to the profits of the business.

Complaints of this kind have frequently been made, but it has rarely happened that the evidence in opposition to the statement of the attorney and the clerk has been sufficient to justify the Examiners in rejecting the candidate.

During the last four Terms ending with Easter Term, the number of candidates examined was 394, and of these, 352 were passed, and 42 postponed.

#### IX. GENERAL AFFAIRS OF THE SOCIETY.

*The Library.*—The Council have much satisfaction in pointing the attention of the Members to the state of the Library. This

has continued, as heretofore, annually to increase in extent and utility. Nearly 500 volumes have been added during the year, and the whole collection now amounts to 10,909 volumes.

The reprint of the catalogue has been delivered to the Members, and shows that in the most useful and important departments of the law to the practitioner, the Members have access to every book of established authority, in addition to an invaluable collection of parliamentary works, works in county history and topography, and works of reference. Some valuable donations have been received from Authors, and from Members of the Society.

*Lectures.*—The several courses of Lectures are still successfully continued. Mr. *Jebb* having closed his series on Equity last year, Mr. *Conybeare* was elected in his stead. Mr. *Kerrlake* having also concluded his course on Conveyancing, Mr. *R. Walpole* was appointed to lecture on that subject; and Mr. *Hodgson* has continued his course on Common Law and Criminal Law.

*Vacancies in the Council.*—The Members will have observed by the Circular convening this meeting, that there are three vacancies in the Council, which have occurred during the past year. They have particularly to regret that one of those vacancies has been occasioned by the decease of Mr. *Bayley*, who was elected a member of the Committee of Management under the first Charter in the year 1830, and re-elected under the second Charter. Mr. *Bayley* was very frequent in his attendance at the meetings of the Committee and the Council; and from the deep interest he took in the welfare of the Society, contributed valuable aid in administering its affairs.

The Council have also to regret the retirement of Mr. *Shadwell* and Mr. *Pocock*. Both of these gentlemen had been successively invited to the office of President of the Society; but their state of health did not enable them to undertake the onerous duties thereof. The Society, however, has been long indebted to them for the exercise of their great experience and sound judgment, and for their courtesy and kindness on all occasions.

*Funds.*—The receipts and payments of the last year, and the state of the debts and assets of the Society, are contained in the Auditors' Report, which will be read to the Meeting.

*Number of Members.*—Since the last Annual Meeting, 29 town and 6 country Members have been approved and admitted into the Society, and 22 have retired. The number of deaths during the year, the Council regret to say, has been 26; and the Society now consists of 1013 Members practising in town, and 294 in the country, making in all, 1307.

(Signed) JOHN S. GREGORY, *President*.

## COUNTY COURTS.

### SCALE OF COSTS AND CHARGES TO BE PAID TO ATTORNEYS.

THE following are the five Judges appointed by the Lord Chancellor, under sect. 1 of the 15 & 16 Vict. c. 54 (The County Courts' further Extension Act), "to frame a Scale of Costs and Charges to be paid to Attorneys in the County Courts, to be allowed as between Attorney and Client and as between Party and Party:"—

James Manning, Esq., the Queen's Ancient Serjeant.

John Herbert Koe, Esq., Q. C.

Alfred Septimus Dowling, Esq., S. L.

William Walker, Esq.

William Furner, Esq.

Henry Nicol, Esq., of her Majesty's Treasury, Secretary.

## BARRISTERS CALLED.

*Trinity Term, 1852.*

### LINCOLN'S INN.

William Williamson Ker, Esq., M.A.  
Edward Goodall Stewart Griffiths, Esq.  
William Stigant, Esq., B.A.  
James George Lawson, Esq.  
George Long, jun., Esq.  
Francis Housman, Esq.  
Richard Pearce Rosier, Esq.  
Edward Brookebank, Esq., LL. B.  
Thomas Woodbine Hinchliff, Esq., M.A.  
William Dundas, Esq., M.A.

### INNER TEMPLE.

June 7.

Arthur Dyott Thomson, Esq., M.A.  
James Lennox Hannay, Esq., M.A.  
Frederick Dumergue, Esq., B.A.  
Edward Yates, Esq., B.A.  
John Richard Fowler, Esq., B.A.  
Edward Thoratton, Esq., B.A.  
Cecil Smith, Esq., B.A.  
Arthur George Macpherson, Esq.  
David Kitcat, Esq., B.A.  
Edward Carthew, Esq.  
James Holy Fernley, Esq.  
Joseph Holdsworth Fernley, Esq.

Samuel Wordsworth Barber, Esq.  
George William Latham, Esq., M.A.  
John Foster Gresham, Esq., B.A.  
Edmund Powell, Esq., M.A.  
George Samuel Fereday Smith, Esq., M.A.  
Eugene Sherwood, Esq.  
Joseph Beaumont, Esq.  
Henry Charles Lopes, Esq., B.A.  
John Elliot Boileau, Esq., B.A.  
Hon. Edwin Berkeley Portman.

### MIDDLE TEMPLE.

June 8.

John Digby, Esq.  
Weston Joseph Sparkes, Esq.  
Thomas Wilson Barnes, Esq., M.A.  
Richard Doddridge Blackmore, Esq., M.A.  
Henry Charles Butler, Esq., M.A.  
Horace Lloyd, Esq., B.A.  
William Palmer Hale, Esq., B.A.  
Hon. James Master Owen Byng.  
David M'Lachlan, Esq., M.A.  
John Smith, Esq.  
Hans Stuart Hawthorne, Esq.

### GRAY'S INN.

June 7.

Morgan John O'Connell, Esq., B.A.  
William Irving Hare, Esq.  
James Sheil, Esq., B.A.  
Charles James Coleman, Esq.  
Henry Williams, Esq.

## DISSOLUTIONS OF PROFESSIONAL PARTNERSHIPS.

*From July 27th to Aug. 20th, 1852, both inclusive, with dates when gazetted.*

Moore, Henry, of Wimborne Minster, and Robert Gresta, of Blandford Forum, Solicitors. Aug. 6.

Palmer, William Henry, Thomas France, and Charles James Palmer, 24, Bedford Row, Middlesex, Attorneys and Solicitors (so far as relates to the said Thomas France). Aug. 13.

Royle, Thomas Vernon, and John Edward Colville Husband, Newgate Street, Chester, Attorneys. July 27.

## MASTER EXTRAORDINARY IN CHANCERY.

*From July 27th to Aug. 20th, 1852, both inclusive, with date when gazetted.*

Winterbotham, Wm., Cheltenham. July 30.

## RECENT DECISIONS IN THE SUPERIOR COURTS.

### AND SHORT NOTES OF CASES.

#### Lord Chancellor.

*In re Royal Bank of Australia, ex parte Meux's executors.* July 7, 8, 1852.

WINDING-UP ACT.—EXECUTORS.—CONTRIBUTORIES.—POWER OF DIRECTORS TO CANCEL SHARES.

A director in a banking company held 20 shares as his qualification, and had, upon the directors arranging to take an addi-

tional number of shares amongst themselves, agreed in August, 1840, to have 500 shares and to pay the deposits and calls thereon within four years, giving a promissory note for 5,000*l.* as a collateral security. Upon his death, in 1842, his executors applied to the directors to know what was the extent of his connexion with the bank, and upon their being informed he was the holder of 20 shares only, they sold the same and a

*transfer was duly made. The directors cancelled the 500 shares and note in 1843, and an order to wind up was obtained in 1850: Held, on appeal from, and confirming the decision of Vice-Chancellor Knight Bruce, that the executors were not liable as contributories in respect of the 500 shares.*

THIS was an appeal on behalf of the official manager of the above company from the decision of Vice-Chancellor Knight Bruce (reported *ante*, vol 42, p. 68), removing the names of the respondents from the list of contributories in respect of 500 shares. It appeared that their testator, Mr. Thomas Meux, was a director of the company, and held 20 shares as his qualification, on which he paid the deposits and signed the deed. It also appeared that in August, 1840, the directors agreed amongst themselves that each should take an additional number of shares, and the deceased agreed by letter to take 500 and to pay the deposits and calls thereon within four years, and he gave a promissory note for 5,000*l.* to the trustees as a collateral security, but he died in 1842 and before it became due. The respondents applied to the directors to ascertain the number of shares held by him, and upon their being informed he was the holder of 20 shares they sold the same, and a transfer was duly made,—the 500 shares and the promissory note having been cancelled by the directors in 1843. An order for winding up the company was obtained in 1850, and the Master having on a reference placed the respondents on the list in respect of the 500 shares, and his decision having been reversed by the Vice-Chancellor, this appeal was presented.

*W. T. S. Daniel and Rosburgh* in support; *Bacon and Busk*, contra.

The Lord Chancellor said, the executors had done all that was required of prudent men, and that as the transaction was one entirely within the powers conferred on the directors by the deed, they were bound by the representations made by them to the executors; and taking into account the length of time which had elapsed since these were made, the order of the Court below must therefore be affirmed.

#### Lords Justices.

*Glasse v. Richardson.* June 29; July 1, 17, 1852.

DEVISE OF COPYHOLDS.—RIGHT OF LORD TO ADMISSION OF DEVISEES IN TRUST FOR SALE.—SPECIFIC PERFORMANCE.

*Held, dismissing with costs an appeal from Vice-Chancellor Turner, that the lord of a manor is not entitled to call for the admission of the devisees in trust for sale of copyhold land before he admits the purchaser and appoints. A decree for the specific performance of a contract by the defendant from such trustees was therefore affirmed.*

By his will, dated in January, 1850, the testator, Mr. Brayford, devised certain copyhold estates in Hertfordshire to such uses as the plaintiffs should by deed or will appoint,

and subject thereto to the use of the plaintiffs, their heirs and assigns for ever. The plaintiffs having sold the property by auction to the defendant appointed in his favour, but upon the steward of the manor declining to admit him unless the plaintiffs were first admitted and then surrendered to the use of the defendant, he refused to complete and the lord ultimately entered *quousque* for want of a tenant. The plaintiffs then filed a claim to enforce the specific performance of the contract, and the Vice-Chancellor Turner having decreed in their favour (reported *ante*, vol. 43, p. 495), this appeal was presented.

*Lee and Haddan* in support; *Roll and Rogers* contra.

The Lords Justices said, the disposition of copyhold property by a testator amounted to nominating a party to be a tenant, and whether such party were nominated by the testator himself or by another to whom the right was deputed, the party named was the tenant and entitled to call on the lord for admission, and the lord would not be left without a tenant until the party entitled exercised his right of nomination, as he might seize the premises for want of a tenant. The appeal would therefore be dismissed with costs.

#### Master of the Rolls.

*Barklett v. Patten.* Aug. 5, 1852.

COMMISSION TO EXAMINE WITNESS ABROAD.—MASTER'S CERTIFICATE.—APPEAL.—LACHES.

*An order was made for the issue of a commission to examine a witness at Sydney, upon the Master's certificate of its propriety, where it was not shown the required evidence was unnecessary and there had been no laches on the plaintiff's part.*

THIS was a motion for the issue of a commission to examine a witness at Sydney in this suit, which was instituted for the administration of the estate of Mr. Penny, by the specific legatee of a debt due to the testator from Messrs. Melville and Andrews, of Crutched Friars and Sydney. The debt was devised to Melville, Andrews, and the defendant, Mr. Patten, in trust for the plaintiff's wife for life, with remainder to him for life, with remainder to their children, but it was provided by the will that the fund was not to be called in for five years, if the interest were regularly paid. It appeared, however, that Messrs. Melville and Andrews were insolvent, and the plaintiff sought to charge the defendant with the payment of the fund, on the ground he had neglected to call it in. Upon a reference to the Master as to whether the defendant had neglected to use due diligence in getting in the debt, he had certified that it would be necessary to examine Mr. Melville, who resided at Sydney.

*Goodeve* in support; *Drewry* contra, on the ground it was for purposes of delay, and that the plaintiff was precluded from relief by his own acquiescence in not calling in the fund.

The Master of the Rolls said, that as it was not shown the evidence was unnecessary, and as there had been no laches on the part of the plaintiff, the order for the commission would be made.

#### Vice-Chancellor Turner.

*Hinder v. Streeten.* July 15, 1852.

#### SPECIFIC PERFORMANCE OF CONTRACT.—COSTS OF SUIT WHERE VENDOR DIED BEFORE SALE.—DEFAULT.

Held, that costs will not be ordered to be paid out of the estate of a vendor who dies after the contract for sale of land and before the completion thereof, where there is no default. In a suit by the purchaser to enforce the contract under those circumstances a decree was made for specific performance, without costs.

THIS bill was filed for the specific performance of a contract entered into by the testator for the sale to the plaintiff of two parcels of land in Wiltshire. It appeared the purchaser had entered into possession and expended money thereon, but the testator died before the sale was completed.

*Campbell and Berkeley* for the plaintiff; Sir W. Page Wood and *De Gex* for the defendants.

The Vice-Chancellor said, that a decree must be made for specific performance, but without costs as there had been no default, in accordance with the decision of Vice-Chancellor Knight Bruce,<sup>1</sup> and in preference to the contrary decision of the late Vice-Chancellor of England<sup>2</sup> charging the costs on the estate.

#### Vice-Chancellor Kinderley.

*D'Almeida v. Moseley.* July 21, 1852.

#### PAYMENT OF FUND OUT OF COURT.—POWER OF ATTORNEY.—COVENANT FOR NON-REVOCATION AND FOR INDEMNITY.

A sum of money was directed to be paid out of Court upon a power of attorney executed by the party entitled at Port Natal, although it did not contain a covenant not to revoke the power and for indemnity in case the party died before it was acted on.

THIS was a petition for the payment out of Court of a sum of money, to which a party at Port Natal was entitled. It appeared that the power of attorney did not contain the usual covenant not to revoke the power, or for the indemnity of those acting thereunder, in the event of the party's death before it should be acted on.

*Chandler and Shapter* for the several parties.

The Vice-Chancellor said, the power might be acted upon, as the representatives of the party would not be allowed to avail themselves of the circumstances which might happen.

<sup>1</sup> *Hanson v. Lake*, 2 Y. & C., Ch. C., 328.

<sup>2</sup> *Midland Counties' Railway Company v. Westcomb*, 11 Sim. 57.

#### Vice-Chancellor Parker.

*Langhorne v. Langhorne.* July 28, 1852.

#### TRUSTEE ACT, 1850.—VESTING ORDER.—CONVEYANCE.

The Court will direct a conveyance instead of a vesting order under the 13 & 14 Vict. c. 60, unless there exist some especial reason to the contrary; and semble, the fact of the cestuis que trustent being numerous is not such a reason, but where one of the parties was in India an order was made.

THIS was a petition for a vesting order under the 13 & 14 Vict. c. 60.

*W. D. Lewis* in support.

*Toller, Snape, Hon. William Spring Rice, and Cumming*, for other parties.

The Vice-Chancellor said, it was much better in these cases to have a conveyance rather than a vesting order, unless there was some especial reason to the contrary. The statements and prayer of the petition on which the order must be founded ought to be framed as carefully as the recitals and the operative parts of a deed, whereas that was seldom done, and particularly where the cestuis que trustent were numerous, as in many cases the parties at whose instance vesting orders had been obtained had been obliged, in consequence of some unforeseen circumstance having existed to which their attention had not been directed, to apply to have them discharged. But as in the present case one of the parties was in India, a vesting order might be taken.

#### Court of Queen's Bench.

*Regina v. Commissioners of the Insolvent Debtors' Court.* June 3, 18, 1852.

#### INSOLVENT. — RE-HEARING. — COUNTY COURT.—MANDAMUS.

Where the application of an insolvent has been heard by the Judge of a County Court, under the 10 & 11 Vict. c. 102, held, that the Insolvent Debtors' Court has no power under sect. 96 of the 1 & 2 Vict. c. 110, to re-hear the case; and a rule for a mandamus for such re-hearing was therefore refused.

THIS was a motion for a mandamus on the defendants to re-hear an application on behalf of an insolvent, which had been decided by the Judge of a County Court, under 10 & 11 Vict. c. 102.

*Griffith* in support, referred to sect. 96 of the 1 & 2 Vict. c. 110, which enacts, that "every such adjudication as aforesaid by the said Court, Commissioners, or Justices as aforesaid, with respect to any prisoner, and the order thereupon, so made as aforesaid, shall be final and conclusive, and shall not be reviewed by the said Court, unless the said Court shall thereafter see good and sufficient cause to believe that such adjudication has been made on false evidence, or otherwise improperly made or fraudulently obtained, in which case it shall be lawful for the said Court, upon the application of such prisoner, or of any creditor of such



prisoner, to order," "the said matter to be re-heard before the said Court, or one of the Commissioners thereof on his circuit,<sup>1</sup> or such Justices as aforesaid, as the case may require, who shall thereupon re-hear the same, and shall and may, if just cause shall appear, annul the original adjudication and order thereupon made

<sup>1</sup> The jurisdiction on Circuit was transferred to the County Courts by sect. 10 of the 10 & 11 Vict. c. 102.

in such case, and shall have the same power and authorities upon such re-hearing as upon the original hearing in pursuance of this Act, and may adjudicate in such matter accordingly.  
*Cwr. ad. vult.*

The Court said, there was no provision expressly giving a power of re-hearing to the Insolvent Debtors' Court, and that the re-hearing could only take place where the first hearing had taken place, before the Insolvent Court. The rule would therefore be refused.

## ANALYTICAL DIGEST OF CASES,

REPORTED IN ALL THE COURTS.

### Courts of Equity.

[For the previous Sections of the Digest in this Volume, see

*Privy Council*: Appeals, p. 17.

*House of Lords*: Appeals, p. 38.

#### Courts of Equity:

Law of Attorneys and Solicitors, p. 125.

Contributories under the Winding-up Act, p. 143.

Law of Trustees, p. 165.

Lunacy, p. 185.

Law relating to Infants, p. 186.

Law relating to Charities, p. 203.

Appeals in Bankruptcy, p. 225.

Construction of Statutes, pp. 104, 286, 306, 325.]

## LAW OF WILLS.

### ABATEMENT.

*Annuities and Legacies.—Priority.—Onus probandi.*—The rule is, that in cases of deficiency of assets all annuities and legacies abate rateably, and that the onus lies on the party seeking priority to make out clearly and conclusively that such priority was intended. *Miller v. Huddleston*, 3 M'N. & G. 513.

Cases cited in the judgment: *Brown v. Brown*, 1 Keen, 275, 277; *Thwaites v. Foreman*, 1 Coll. 409, 414.

### ADMINISTRATION OF ASSETS.

*Devolution of purchase-moneys of estates according to limitations of will.*—A testator devised an estate, N., by his will, the limitations of which he varied by a codicil, both dated prior to the Wills Act, and afterwards he entered into a contract by which he agreed to give, after his death, to A. alone the option of purchasing the estate N., and also another estate W., upon the purchase of which the contract for an option was entered into. By a second codicil, made after the Wills Act, reciting the purchase of the estate W., he devised that estate. A. enforced a sale to him by suit against the devisees of the testator: *Held*, that the purchase-moneys of estates N. and W. devolved according to the limitations of the will, which would have been applicable to these estates in case there had been no sale.

The testator borrowed 2,000*l.* to enable him to pay the purchase-money of estate W., and that sum was found by the Master to be a lien on the estate at the testator's death: *Held*, that the Wills Act did not alter the course of administering the assets, but that the devisees had a right to have the personal estate of the testator applied towards the discharge of the lien; and that failing that, he had a right to have descended real estate so applied; but that, both these resources failing, the devisee was not entitled to have contribution from estates of the testator comprised either in a particular or in a residuary devise. *Emuss v. Smith*, 2 De G. & S. 722.

Cases cited in the judgment: *Lawes v. Bennett*, 1 Cox, 167; *Knollys v. Shepherd*, 1 J. & W. 499.

### ANNUITIES.

*Charges on corpus of estate.*—A testator (subject to and charged with the payment of his annuities), devised his real estate to trustees, as to part for his wife for life, and then, in the first place, out of the rents, to pay the annuities, and subject to the life estate of his wife and the annuities to A. for life, &c., &c.: *Held*, that the real estates were liable to be sold for payment of the arrears of the annuities. *Picard v. Mitchell*, 14 Beav. 103.

### ATTESTATION.

A testator made his will, duly attested so as to pass freehold estate, dated in 1828. In May, 1831, he made a codicil, which was attested by two witnesses only, declaring it to be a codicil to his will, and directing that it should be annexed thereto. This codicil varied the disposition of parts of his real estate. In September, 1831, he made a second codicil, duly attested so as to pass freehold estate, which he declared to be a second codicil to his will, and directed the same to be annexed thereto and taken as part thereof. The second codicil concluded by confirming his will: *Held*, that the second codicil gave the same effect to the first codicil, as if it had been duly attested by three witnesses. *Aaron v. Aaron*, 3 De G. & S. 475.

Cases cited in the judgment: *Doe v. Evans*, 3 Tyr. 36; 1 Cr. & M. 42; *Gordon v. Lord Reay*, 5 Sim. 274.

### CHARITABLE USE.

By a codicil, the testator gave the rent of a

copyhold house for the benefit of his wife and A., to be applied as in his will set forth, subject to all the conditions contained in his will, share and share alike; and after the death of his wife and A., or in default of their (L. Lloyd & A.) not fulfilling the conditions contained in his will, he gave the said house upon trust for the minister and churchwardens of St. Mary's, Chatham, to apply the rents as follows:—to take 5l. per annum for themselves out of the rents, to keep the tomb in repair, and the residue and remainder of the rent to be applied for the benefit of his nephew, and, after the death of his nephew, the remainder of the rent to be applied for the benefit of the Church Missionary Society. At the original hearing, the devise to the ministers and churchwardens was declared void, and they were dismissed.

*Held*, that this decree was conclusive against the whole of the gift to the churchwardens, and that all the trusts failed; that the widow and A. took the legal estate in the rents during their joint lives, and the life of the survivor; with remainder to the customary heir of the testator. *Lloyd v. Lloyd*, 2 Sim. N. S. 255.

#### CONDITION.

*Acquisition of title of Duke or Marquis.*—John William, Earl of Bridgewater, devised his freehold estates to trustees, in trust to convey them to the use of Lord Alford, his great-nephew, for 99 years, if he should so long live; remainder to trustees and their heirs during the life of Lord Alford, in trust to preserve contingent remainders: remainder to the use of the heirs male of the body of Lord Alford, with divers remainders over: provided that if Lord Alford should die, not having acquired the title of Duke or Marquis of Bridgewater, the estate directed to be limited to the heirs male of his body, should cease, and the estates should, thereupon, go over to be enjoyed according to the subsequent uses and limitations directed by his will.

Lord Alford died, leaving a son, but without having acquired the title.

*Held*, that the proviso was valid. *Egerton v. Lord Brownlow*, 1 Sim. N. S. 464.

#### CONSTRUCTION.

*Absolute gift.*—Contingent on happening of certain events.—Testator gave 4,000l. to his granddaughter, and directed his executors to pay it to her on her attaining 21, and to apply the interest of it for her maintenance during her minority. By a codicil, he directed that his granddaughter should have only the interest of 2,000l. for her maintenance, until she attained 23, and that the interest of the other 2,000l. should be accumulated, and that, on her attaining 23, his executors should have the whole settled upon her for her life, and after her death, to her child or children, in equal proportions, so that no husband of hers might spend it. The granddaughter attained 23, and died without having had a child, and without the executors having made any settlement of the legacy.

*Held*, that the gift in the will, was an absolute gift, and that, in the events that had happened, it was not affected by the codicil. *Bell v. Jackson*, 1 Sim. N. S. 547.

#### DEVISE.

*"Copyholds."*—Copyholds *held* not to pass under a devise of "all and every my freehold hereditaments and estate in the county of Surrey," although the freeholds and copyholds were, to some extent, intermixed, and usually let together. *Quennell v. Turner*, 13 Beav. 240.

#### ESTATE TAIL.

*Executory devise.*—A testator who died in 1833, devised his residuary real and personal estate to his eldest son, and his heirs, executors, &c.: provided, and his will was that, in case his said son should die without leaving any lawful issue of his body, such part of his said residuary estate as was freehold, and situate in certain places, should, at his death, be divided into two equal parts; one of which parts he gave to his second son, and his heirs; and the other to his daughter and her heirs.

*Held*, as to such part of the testator's residuary estate as was freehold, and situate in the places named, that his eldest son took, not an estate tail in it, but an estate in fee, with an executory devise over to take effect at his death, in case he should have no issue living. *In re Wills, Somerset, and Weymouth Railway Company's Act, ex parte Davies*, 2 Sim. N. S. 114.

Case cited in the judgment: *Forth v. Chapman*, 1 P. W. 663.

#### EXECUTORS.

*Allowance to Indian executors.*—Commission.—A planter in India obtained advances from his agents, who, by custom, were entitled to a commission on their advances, and on the produce of the sales of the crop. The planter died, and his executors sold the factory, and got in the crop, and remitted them to the agents, who sold the latter, and accounted to the executors for the balance, after deducting the amount due to them: *Held*, that the executors were entitled to 5 per cent. (Indian commission) on the gross proceeds of the factory and crop. *Matthews v. Bayshaw*, 14 Beav. 123.

#### INTESTACY.

*Title of Crown.*—An intestate had stock in the funds to a very large amount. No next of kin appeared to claim administration, which was taken out by the Solicitor to the Treasury. The administrator, after several years had elapsed without any claim being substantiated, sold out the fund, and paid the proceeds into the Treasury. Afterwards, the next of kin appeared and substantiated their title in a suit in Chancery: *Held*, that the administrator on paying over to them the proceeds of the stock, must also pay interest at 4l. per cent. from the time when the stock was sold out. *Turner v. Maule*, 3 De G. & S. 497.

#### LEGACY.

*Apportionable between real and personal es-*

*tate.*—A legacy directed by an appointment in pursuance of a will to be raised by mortgage of the moiety of the residuary real and personal estate, on the expiration of a life interest in such moiety, and the residue of such legacy, and another legacy directed to be raised and paid by mortgage or sale of the whole or any part of the real and personal estate, on the expiration of another life interest: *Held*, not to be charges primarily payable out of the personal estate, but to be apportionable between the real and personal estate. *Falkner v. Grace*, 9 Hare, 282.

#### NEXT OF KIN.

*Contingent or future event.*—The mere circumstance that a gift to the next of kin of a testator is not immediate, but is contingent upon a future event, which might or might not happen, is insufficient to render the description applicable only to such person or persons as should form the class at the time of the occurrence of the event. *Bird v. Luckie*, 8 Hare, 301.

#### POWER.

*Mental incapacity.*—The Court has jurisdiction to decide upon the validity of the execution of a testamentary power over personalty, with reference to the state of the donee's mind at the time of the alleged execution. *Morgan v. Annis*, 3 De G. & S. 461.

#### RESIDUARY DEVISE.

*Subject to debts.*—*Real estate in mortgage.*—A residuary devise of all the testator's estate, personal and real, although made subject to the payment of his debts, passes the legal estate in premises of which the testator was mortgagee in fee, notwithstanding the case of *Silvester v. Jarman*, 10 Price, 78. *In re Field's Mortgage*, 9 Hare, 414.

#### RESIDUARY LEGATEE.

*Remainder.*—*Duty as to proper investment.*—Obligation on a party entitled to a residuary estate in remainder to see that it is properly invested. *Browne v. Cross*, 14 Beav. 112.

#### "SURVIVING" RELATIONS.

Bequest to such persons as the testator's wife should appoint, and for want of appointment, to her "surviving" brothers and sisters: *Held*, to refer to brothers and sisters who survived her. *Davies v. Thorns*, 3 De G. & S. 347.

#### TENANT FOR LIFE.

*Unreceived dividends.*—Unreceived dividends held not to pass under a bequest of the dividends and interest of all the testator's money in the funds to a legatee for life. *Shore v. Weekly*, 3 De G. & S. 467.

#### TRUST.

*What acts constitute a binding trust.*—A testatrix gave to A. and B. in trust for the benefit of C., her sister, a sum of 2,000*l.* 3 per cent. consols. She afterwards expressed to B., whom she also appointed her executrix, an intention that C. should have a further sum of

2,000*l.* consols, but she did not alter her will. A. died in her lifetime; after her death B., the surviving trustee and executrix, sold 2,000*l.* consols, and invested the produce in her name in the 3 per cent. reduced, and shortly afterwards she invested a further sum of 2,000*l.* 3 per cent. reduced in her name; she was proved to have declared frequently her intention of carrying out the testatrix's intention: *Held*, that the second sum of stock was duly impressed with a trust in favour of C. *Gray v. Gray*, 2 Sim. N. S. 273.

#### VAGUENESS.

*Words expressive of hope, desire, &c.*—Words accompanying a gift or bequest expressive of confidence, or belief, or desire, or hope, that a particular application will be made of such bequest, will be deemed to import a trust upon these conditions; 1st, that they are so used as to exclude all option or discretion in the party who is to act, as to his acting according to them or not; 2ndly, the subject must be certain; and 3rdly, the objects expressed must not be too vague or indefinite to be enforced.

Vagueness in the object will, unquestionably, furnish reason for holding that no trust was intended, yet this may be countervailed by other considerations, which show that a trust was intended, while, at the same time, such trust is not sufficiently certain and definite to be valid and effectual.

It is not necessary to exclude the legatee from a beneficial interest, that there should be a valid or effectual trust, it is only necessary that it should clearly appear that a trust was intended. *Briggs v. Penny*, 3 M. & G. 546.

#### WIDOW.

*Freebench and benefit by will.*—*Widow put to elect.*—A testator, being seised of copyhold lands, which, on his death, became subject to customary freebench, gave to trustees the residue of his real and personal estate upon trust to invest the money in the funds, and to receive the dividends thereof, and the rents of his real estate; and after payment of his debts and testamentary expenses, to pay to his widow, during her life, the annual sum of 20*l.*, and to pay the residue of such annual produce to his son; and, after his death, the trustees were to hold the said real and personal estate upon trusts for the children of his said son. The will contained the following declaration:—"I empower my said trustees to lease any lands, which they may hold upon the trusts of this my will, for not more than 21 years, at rack-rents:" *Held*, that, with this power of leasing in the will, the widow was put to her election between the annuity given to her by the will and her freebench.

Observations on *Holditch v. Holditch*, 2 Y. & C., C. C., 22. *Grayson v. Deakin*, 3 De G. & S. 298.

Cases cited in the judgment: *Hall v. Hill*, 1 Dr. & W. 94; *O'Hara v. Chaine*, 1 J. & L. 662.

# The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

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SATURDAY, SEPTEMBER 4, 1852.
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## NEW PLAN FOR THE REGISTRATION OF TRANSFERS OF LAND.

THE Legislature, during the Session of 1851, appeared unmistakably to have determined that a General Register of Assurances should be established, and the only questions were—*how* it could be constructed, and whether *metropolitan* or *local*—central or departmental. In the Session of 1852, the measure was not renewed, but the delay was sufficiently accounted for by the change of government,—the peculiar state of public affairs,—and the known adverse opinion of the present Lord Chancellor to all schemes of registration, so far as they had been then proposed.

Since the last discussion before Parliament, a new plan has been suggested by an eminent solicitor of great experience in the law and practice of conveyancing. We have not yet sufficiently considered its scope and utility in principle, or its details, or the means by which it is to be carried successfully into practical effect; but it is certainly entitled to the full and respectful consideration of the Profession. We have no hesitation, however, in declaring that the plan is infinitely less objectionable than any of its predecessors.

Whether it will find favour in the eyes of the head of the law, remains to be ascertained. We are not aware whether it has yet been submitted to his consideration. The Profession will doubtless look forward with no small interest to the result of his lordship's consideration of the plan,—bringing to bear upon it his vast knowledge of the law of real property and his marvellous acuteness in investigating the *modus operandi* of so important and extensive an alteration.

In the meantime, we give the plan with  
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the Author's able introductory remarks and explanations, *in extenso*.<sup>1</sup>—

"An eminent writer on Political Economy<sup>2</sup> has remarked that 'to make land as easily transferable as stock would be one of the greatest economical improvements which could be bestowed on a country.' It may well be doubted whether the object here proposed is attainable to the full extent of the proposition; but a system of land-transfer, which shall be accurate and, at the same time, simple, expeditious, and cheap, will be a great and valuable acquisition, not only to the owners of land, but to the public at large, though it may fall short of the simplicity and cheapness attained in the transfer of the public stocks or funds.

"It has been estimated by persons of experience and authority in such matters, that a cheap, simple, expeditious, and accurate system of transfer of land, would add four or five years' purchase at least (some will say 10) to the marketable value of land, and the subject must therefore be admitted to be one of great national interest and importance, and entitled to careful and serious examination.

"The difference of expense between such a system and the present, is by no means the measure of the additional value to be conferred. Simplicity, expedition, and accuracy, carried to the extent of giving to a purchaser, *immediately*, a simple and absolutely safe title to his purchase, are much more important elements than cheapness (important as that element is) in the calculation of the extent of additional value.

"This subject is not identical with that of the Registration of Assurances, but it is intimately connected with it. Nearly all the eminent lawyers who, from the time of Lord Bacon to the present day, have given much attention to the subject of the *Registration of Assurances*, appear to have agreed in this—that a cheap, simple, expeditious, and accurate register of assurances is desirable; and that one which is

<sup>1</sup> This Paper appeared in *The Law Review* for August, 1852, having been previously read to the Law Amendment Society by its author, Mr. W. Strickland Cookson.

<sup>2</sup> John Stuart Mill. *Pol. Econ.* vol. ii. p. 446.

not cheap, simple, expeditious, and accurate would be mischievous.

"But here agreement ends. Hitherto no plan of registry has been produced which would bear the test of close and severe examination. Each in turn has been found open to insuperable objections, and many practical men have given up the pursuit of the object as unattainable.

"The Real Property Commissioners, in their report of July, 1880, in which they recommended a General Registry of Assurances, express the opinion of the Profession when they state that the system established in the only two register counties in England—Middlesex and Yorkshire—cannot be adopted. 'It may be safely assumed,' they say, 'that the indexes now in use at the offices in Middlesex and Yorkshire are not such as to fulfil their requirements, or to afford a sufficient guide for the construction of a new system. Neither do the Scotch or Irish offices assist us in attaining the ends desired.'

"But the system proposed by the Commissioners was open to serious objections. It was an essential part of their plan to have an index founded on a public map of the whole kingdom, and that every deed and instrument relating to land, whether affecting the legal estate or the equitable interest, should be put on the Register.

"Now it must be manifest that if a purchaser be obliged to examine every instrument of which such a Register gives him notice, before he can accept a title, the Register can have no tendency to diminish the expense attending the investigation of titles.

"Under the system now in operation, every successive purchaser or mortgagee of an estate requires to be satisfied that the title is a marketable one; and, for that purpose, his solicitor must have an abstract of title delivered to him, showing all dealings with the property for 60 years past, unless special restrictions have been imposed by the contract: he must compare the abstract with the original deeds to ascertain its accuracy; he must require satisfactory evidence of identity, that is, that the lands purchased are wholly included in the deeds abstracted; he must call for evidence of heirships, in cases where the property, during the 60 years, has passed by descent; he generally, if the property be considerable, consults counsel on the title, as disclosed by the abstract and supported by the evidence, and he prepares the conveyance; and, if the purchaser sell the estate the following year, the title must again be investigated by the solicitor to the new purchaser, as strictly as if no previous investigation had taken place. And this state of things will not be changed, in any respect, if the suggestions of the Commissioners be adopted; all the expenses must be incurred as before, and the further expense of searching the Register for all deeds and documents affecting the property, and of preparing a duplicate of the conveyance, and transmitting it to be registered, besides the Registrar's fees on registration.

"Before offering for consideration a scheme for simplifying the transfer of land, which it is hoped will eventually get rid of nearly all the heavy expense, complication, and delay connected with the investigation of titles to and conveyance of land, inevitable under the present system, it is desirable that attention should be directed to distinctions between land and stock inherent in the two kinds of property.

"One of the most obvious distinctions between land and stock is, that there is an *individuality* in the former which does not exist in the latter. The purchaser of land buys a specific thing, in a particular parish or place, marked out by metes and bounds, and distinguished from every other thing; the purchaser of stock buys a certain quantity of the article, and is thereupon registered as the owner of that quantity; but his 100*l.* stock in a particular fund in no respect differs from the 100*l.* stock, in the same fund, of any other owner; there is no individuality in either—if the two owners exchange stock with each other, no perceptible alteration is effected.

"Another important difference between land and stock, as to the facility of transfer, is, in the detailed particularity of description required for the former, which is not needed by the latter. A field must be identified by description of quantity, boundary, parish, and county; whilst the stock is inscribed in the ledger as so many pounds, shillings, and pence, belonging to the owner.

"A further distinction is in the greater facility of subdivision afforded by stock than is possible with land. An owner of 100*l.* stock who sells 50*l.* of it, transfers the 50*l.* to a purchaser, who is thereupon entered as the owner of that amount of stock, and the transaction is complete. The sale, on the contrary, of a portion of a field renders necessary a very accurate description of it for its future identity; possibly a map of the whole field may be found indispensable, and there may be rights of way or other rights to be accurately defined.

"There is still another distinction between land and stock not to be overlooked, in considering how far the simplicity of transfer of stock may be applied to the transfer of land. Land is the subject of occupation by tenants or leasees under every variety of arrangement; there are yearly tenancies, and tenancies for lives, and for long or short terms of years:—and various special stipulations are made with reference to buildings, cultivation, repairs, insurance, &c., &c., to be observed by the tenant or lessee. Stock in public Funds is a debt owing by the State, and the owner of any given quantity of such stock is in fact a creditor of the State of that amount. It is subject to none of the enumerated incidents of land, and in this respect the stock of public companies is in a similar position.

\* "An agreement to sell 'two acres from off the west end of a field,' is not a binding agreement. The two acres are not sufficiently defined."

"Finally, besides these distinctions in nature and essence between land and stock, there is the distinction created by our laws of real estate and personal estate. In case of intestacy the former goes to the heir, who may be a minor or otherwise under disability;—the stock is under the dominion of the person to whom administration is granted by the Ecclesiastical Court, and who is always a person of full age, and competent to deal with that description of property.

"All these distinctions, except perhaps the last, which, being the creature of the Law, the Law may remove, have some bearing on the question, whether land can be made as easily transferable as stock; and in all, stock, for the purpose of transfer, has a decided advantage over land.

"When the transfer of stock is spoken of as easy, it is meant that the operation is not only an easy and simple one, but also immediately and completely effectual. If stock be transferred to a *bonâ fide* purchaser, not only is the transfer easy, but the title is indisputable and good against all the world. No investigation of title is necessary. The books of transfer are kept by the Governor and Company of the Bank of England, who are responsible for their accuracy; and if a sum of stock be inscribed in those books as belonging to an individual, that inscription is his sufficient title to the stock in case of sale. He may have no beneficial interest in the stock; he may be a trustee for others; yet, so long as there is no *distringas* on the stock, or after the removal of the *distringas*, he can give an indisputable title to a purchaser of the stock.

"A very large proportion of the stock of this country is vested in trustees for others, and if any of the parties beneficially interested desire to prevent the improper sale and transfer of the stock, they obtain from the Court of Chancery, at a very small expense, and as a mere matter of course, on lodging an affidavit that they claim to be beneficially interested therein, a writ of *distringas*, which is lodged at the Bank of England, accompanied by a notice stating the object of it, and thereupon the transfer of the stock is 'stopped.' If the trustees should, notwithstanding the 'stop,' insist on their right to transfer, notice that they have done so is given by the Bank to the party lodging the *distringas*; and if the party do not within a short time, generally three or four days, obtain an injunction to restrain the transfer, the *distringas* is removed and the transfer takes place as if there had been no *distringas*, to a purchaser who, whether he do or do not know of the existence of the *distringas*, is in no way affected by it. He is not concerned to inquire into the rights of the parties: the transfer is permitted, which is enough for him, and his title is good against all the world.

"It remains to be considered whether, and to what extent, and with what modifications, this system can be usefully applied to the transfer of land.

"And here it may be desirable to point out to what causes the expense attending the transfer of land is mainly attributable.

"In the investigation of titles to land three important questions arise. First, do the title deeds disclose a clear title to the lands described in them? Second, do the lands so described comprise all the lands intended to be dealt with? Third, is the actual possession or occupation of the lands consistent with the title as disclosed by the deeds?

"For it must be obvious that though the deeds may show a clear title in *A.* to the lands described in them, yet if it be not shown that those are the lands intended to be sold or mortgaged, no progress is made; and though the title on the deeds may be clear, and the evidence of identity satisfactory, yet unless the person in possession is holding as the tenant of *A.*, or such possession is shown to be consistent with the title of *A.*, the title cannot be safely accepted.

"A purchaser of land expects, in the absence of any special restriction, that a clear title, showing all the legal and equitable interests, will be deduced for sixty years. A title for the requisite period being deduced by means of deeds, wills, and other instruments, to an estate which *may* be the one he has bought, he must be satisfied by evidence that *it is the same*; the *identity* must be established. He must also ascertain from the tenant, that he occupies, as tenant to the vendor, on the terms stated in the contract; that the *possession* of the occupiers is the possession of the vendors. The bulk of the expense is ordinarily occasioned by the investigation of the title-deeds for sixty years; and it is to the simplifying of the evidence of this sixty years' title, in future years, that our attention must be directed.

"For, under the present system, if *A.* purchase an estate and investigate, at great expense, the title to it in the most careful and searching manner, with the assistance of an able and experienced solicitor, aided by the advice of eminent counsel; and if *A.* afterwards sell or mortgage the estate to *B.*, all the expense of investigation of title which was incurred for *A.*, has to be incurred for *B.*; and there is no way of preserving or continuing, for the benefit of *B.* the labour of *A.*'s solicitor. For there is no evidence on which *B.* can rely, that *A.*'s solicitor has seen all the deeds, or that an accurate abstract of them has been laid before counsel, or that serious objections to the title may not have existed, which have been overlooked or waived for a pecuniary equivalent, and so on.

"And thus it frequently happens that eminent contemporaneous counsel have before them successively the same title to advise upon, at longer or shorter intervals, in the course of their professional career.

"Again, a large estate held under one title may be divided for sale into a great many lots, the purchaser of each lot has his own solicitor by whom the title is to be investigated on his

behalf. An abstract of the title is delivered to each purchaser, and there may thus be fifty different solicitors, assisted by fifty different counsel, engaged at the same time in the investigation of the same title, to the several lots into which one estate has been divided; and sometimes the same counsel is consulted again and again on the same title. In this case there is an advantage to the counsel, but the expense to the purchasers is not diminished.

"In any attempt to assimilate the transfer of land to the transfer of stock, a difficulty presents itself at the very threshold. *How is the system to be commenced?* The title to stock has always, from its creation, been simple and absolute; but there is no such simplicity or certainty in the title to land. If it were possible to ascertain, finally and conclusively so as to bind all the world, the present ownership of every piece of land in the kingdom; and if all absolute owners in fee-simple could be registered as such; and if the Legislature were to confer on Commissioners power to vest in trustees for all parties interested, all lands held for a smaller estate than a fee-simple absolute; and if a simple and well digested system of transfer and registry were thereupon arranged, commencing with what in effect would be a parliamentary title, the difficulty would disappear; but can this be done?

"It will probably be generally admitted to be impossible, having regard to the enormous expense and delay of such a proceeding, and to the difficulty and danger of acting on *ex parte* evidence, at once and peremptorily to ascertain and record, as against all the world, through the medium of commissioners or otherwise, the state of the title to and ownership of every acre of land and every incorporeal hereditament throughout the kingdom, as a preliminary to a more simple system of transfer of land.

"This being so, some other course must be attempted.

"In the present state of the law, land is capable of being limited to successive persons for life and to unborn persons in remainder, and in various other ways; and charges may be created upon it, for jointuring widows and portioning children and for numerous other purposes; and no desire is felt to restrain or limit the power which an owner now possesses over his land. Indeed, the desire would rather be to increase his powers and facilitate their exercise.

"Stock also is capable of being settled on successive persons for life, and on unborn persons in remainder, and in various other ways; and charges may be created on it, for jointuring widows and portioning children, and for various other purposes. In such cases the stock is transferred into the names of trustees, who hold it on the trusts declared by a separate instrument; but the instrument is not noticed in the transfer books; and the trustees, if not restrained by distringas, may at any time sell the stock, and the purchaser will have a good title to it against all the world.

"It has been frequently objected that any system of transfer of land, in any degree resembling the transfer of stock, would open a door for fraud; and that when, under such a system, estates are in settlement, they may be lost altogether by the misconduct of the trustees. This is in truth the great objection addressed by many alarmists, and by some men of acknowledged eminence as real property lawyers, to the landowners of the country.

"An objection of this kind must not be disposed of by *a priori* reasoning, and if it be weighed in the balance of actual experience, it will probably be found very unsubstantial.

"Under the present system nearly all well drawn settlements of landed estates in this country contain clauses empowering the trustees to sell the estates, and to invest the purchase-money in other estates to be settled to the same uses. The power is usually exercised with the concurrence of the tenant for life, if living, but if dead, at the sole discretion of the trustees; and in either case the purchase-money remains under the control of the trustees until re-invested in the purchase of land.

"And it must not be forgotten that a very large proportion of the land in this country is in mortgage; and that, inasmuch as, under the present system, a mortgagee usually has a power of sale, which he may exercise without the concurrence or knowledge of the mortgagor, nearly all the land in mortgage is, and has long been, in the position in which it is alleged that land cannot be safely placed! Experience has shown that the power of sale vested in the mortgagee is very rarely abused, and it is uniformly given without hesitation.

"It is further to be observed, that a very large proportion, probably two-thirds at the least, of mortgages on land are held by persons who are merely trustees of the money, and have no beneficial interest in it. There can be no doubt that many millions of money are at this moment invested on mortgage where the mortgagees are trustees under settlements or wills, and have no beneficial interest in the money. Such mortgagees are in fact trustees of the land subject to the mortgage for one party, and trustees of the fund secured by the mortgage for another; and the land and the money are both unhesitatingly placed in the position in which it is alleged that land cannot be safely put.

"Neither must it be forgotten that there are nearly 800,000,000*l.* of money in the Funds, of which a full proportion (probably one-half) is already in the position in which it is alleged that land cannot be safely placed; and that millions on millions represented by shares in railways, and canals, and docks, and other public companies, are similarly circumstanced. What has been found practically safe for them, cannot, it is presumed, be otherwise than safe for land.

"But in addition to all these considerations, the system of distringas, subsequently recom-

ended to be applied to land transfers, will completely protect the landowner from injury. It will be his own fault if he ever suffer under the proposed system from abuse of power by a trustee or mortgagee.

"It may be as well to premise that in the observations which follow, the terms 'legal title' and 'equitable title,' as applied to stock, are used in the following senses:—'Legal title' is intended to describe that dominion which trustees have over stock standing in their names; 'equitable title' comprehends all the beneficial interests of parties interested in stock standing in the names of trustees. The legal and equitable titles may be united. Thus, if *A.* be the absolute owner of stock which stands in his own name, the legal and equitable titles coalesce. If *A.* be the absolute owner of stock which stands in the name of *B.*, then *B.* has the legal title and *A.* the equitable. This explanation will also apply to the interests in land.

"If the simple absolute legal title to land could be entered in a book, in the same manner as the simple absolute legal title to stock is entered in a book, and if all other interests in land were deemed equitable, as all other interests in stock are deemed equitable; and if a purchaser of land could deal exclusively with the person having the legal title, and be relieved from all obligation to do more than see that the vendor was inscribed in the book as the owner, and to obtain a transfer from him, just as the purchaser of stock can deal exclusively with the person having the legal title, and is relieved from all obligation to do more than see that the vendor is inscribed in the book as the owner, and to obtain a transfer; and if a writ of *distringas* to restrain the transfer of land could be obtained and removed by a party interested, as a writ of *distringas* to restrain the transfer of stock may now be obtained and removed by a party interested, incalculable good would be effected.

"But though it is hoped that eventually this state of things may be attained, we must, it is feared, be content to accept something far short of this for the present. This must be so chiefly because it would be found impossible to attain the end desired at once, except by an immediate compulsory and universal investigation of all the titles to all the land in the kingdom; an act which would be generally condemned as violent and uncalled for, and enormously expensive.

"The object in view is a practicable scheme—a plan which, avoiding all violent dealings with titles, will yet put them in such a train that the desired result will eventually be reached.

"It is proposed that on a certain day an office shall be opened for receiving, classifying, indexing, and filing all transfers of land. That there shall be an index for each county, and an alphabetical index of all the parishes in each county; with an alphabetical index for each parish, to contain the names of all persons who shall register transfers of land in that

parish. That on and after the day named, where any dealing with land takes place by a person entitled to or having power over the whole fee-simple, a transfer shall be executed, conveying the whole fee-simple to one or more persons absolutely. That such transfer shall be on parchment in original and duplicate, in a simple printed form, and shall express the true consideration, and shall transfer the property described in the schedule to the purchaser, or mortgagee, or trustees, in fee-simple. That both parties shall sign the instruments, in order that the signature of the purchaser may be on the register as a check on any future transfer by him. That both parts shall be lodged at the Transfer Office, and compared with each other there; and that the duplicate shall be filed and entered in the Index, and the original returned, stamped as registered, to the party; or the original may be filed and the duplicate returned. That it shall be competent for, if not obligatory on, parties to add a map to the schedule, for better describing the lands. That the validity of the title of the first transferee shall depend, as it does now, on the validity of the title of the party making the transfer; so that the transferee must investigate the title—the legal and equitable title—as he does now. That when the first transferee shall afterwards transfer to another, say at the end of ten or twenty years, the second transferee will see on the Register the evidence of the title for the ten or twenty years, and during that time he will require the legal title only; but as a title for ten or twenty years only will not satisfy him, he must carry back his investigation beyond the commencement of the Register, to see that the first transfer was made by a party duly authorised—legally and equitably authorised—to make it.

"When, under this system, land shall have been transferred for fifty or sixty years, there will be a sufficient title on the Register, and thenceforward the Register or Legal Title only will be referred to or investigated; and, in the meantime, every year will bring a purchaser nearer and nearer to this result, and year by year the expense attending the transfer of land will be diminished.

"The system of restraining transfers of stock by *distringas* should be adapted to restraining the transfers of land; and it will be desirable that the Registrar himself, or the Assistant Registrar, should be the officer by whom the restraint is authorised, and not as at present an officer of the Court of Chancery, and that the Registrar should himself enter the restraint in the Index.

"It may be objected, that under the proposed system a mortgagee would have power to sell the mortgaged estate. The answer to this is, first, that under the present system the mortgagee usually has the legal fee vested in him with an absolute power of sale; and secondly, the mortgagor may lodge a *distringas*, which will prevent a sale without due notice.

"Under this system, equitable mortgages may be created with facility and despatch. An



equitable mortgagee may obtain a distringas if he hold a simple undertaking of the owner to grant a mortgage when required.

"Provision must be made for devises, where the whole legal title is not devised to one party, or where no trustee is appointed. Possibly the executor may, in such case, be deemed the trustee for all parties.

"In cases of intestacy it is not proposed that the Registrar should decide on claims of heirship; such claims must be referred to the Courts of Law or Equity where conflicting claims are preferred, and a purchaser from an heir would require satisfactory evidence of heirship; or the principle of Sir George Turner's Act as to creditors might be applied. Judicial advertisements might be inserted in the *Gazette*, and the claim might be referred to the Registrar, and after judicial publication of his report the claimant's title might be held good, unless questioned within a limited period.

"A separate Register should be kept of Leases, except Occupation Leases for terms not exceeding 21 years, and an entry should be made in the Freehold Index referring to the Lease Register to give notice of its existence. A building lease for 99 years is subject to as many dealings during its continuance as the fee-simple during the same period, and should therefore be registered under a distinct head.

"Provision may also be made with advantage for the deposit and safe custody of wills. Such deposit would afford a protection to wills which has long been felt to be much needed. It would not of course in any degree restrain the power of a testator to revoke or alter his will; he might at any time take it back and cancel it, or he might substitute a later for an earlier will; he might, and indeed ought, to deposit it in a sealed cover, that its contents might not be known, with his name and address endorsed thereon. The wills so deposited would be placed in boxes arranged in alphabetical order, and an index of wills, with the names and addresses of the testators and dates of deposit, would of course be kept.

"It has not been thought necessary, for carrying out this plan, to suggest any alteration in the existing system with reference to crown debts and judgments, though that system is susceptible of great improvement. The present plan of registry of crown debts and judgments may be continued; or the register may be transferred to the Land Registry. It would, however, tend to greater simplicity, if a distringas were required in order to render a crown debt or judgment debt a charge on land.

"The system will have the effect of keeping all equitable arrangements from the public eye, as all equitable arrangements with respect to stock are kept from the public eye. But, as a further protection against impertinent curiosity, it may be prudent that no search should be permitted, or information given, except on a request in writing from a solicitor, stating why and for whom he applies, similar to the request to the Accountant-General of the Court of

Chancery for information as to the state of accounts.

"The advantages expected to result from the proposed system are, that without any additional expense to the landowners, the whole land of the country will gradually, but certainly, come upon the Register; and that eventually the only title to land which a purchaser can require will be a succession of simple transfers, such as have been described, to be found on the Register.

"It may be objected, that the effect of this scheme would be, to compel all litigants respecting land to resort to the Court of Chancery, all interests liable to be litigated being equitable interests. To this objection an answer is suggested by the Report of the Commissioners appointed by her Majesty to inquire into the Process, Practice, and System of Pleading in the Court of Chancery. In that admirable document, which bears the signature of Sir John Romilly, Sir George Turner, Sir James Parker, Sir James Graham, Mr. Henley, Sir William Page Wood, Mr. Bethell, Mr. Crompton (now Mr. Justice Crompton), and Mr. W. M. James, the following remarkable passages occur:—

"The mischiefs which arise from the system of several distinct Courts proceeding on distinct and in some cases on antagonistic principles are extensive and deep-rooted."—"It happens that, in many cases, parties in the course of the same litigation are driven backwards and forwards from Courts of Law to Courts of Equity, and from Courts of Equity to Courts of Law."—"It is obviously most desirable that in every case the Court which has the cognisance of the matter in dispute should be able to give complete relief."—"We have arrived at the conclusion that, without abolishing the distinction between Law and Equity, or blending the Courts into one Court of universal jurisdiction, a practical and effectual remedy for many of the evils in question may be found in such a transfer or blending of jurisdiction, coupled with such other practical amendments as will render each Court competent to administer complete justice in the cases which fall under its cognisance. We think that the jurisdiction now exercised by Courts of Equity may be conferred upon Courts of Law, and that the jurisdiction now exercised by Courts of Law may be competent to administer entire justice without parties in the one Court being obliged to resort to the aid of the other."

"In every word contained in these extracts we entirely and cordially concur. The opinions expressed are worthy of the distinguished men who give utterance to them, and cannot fail to have an important practical influence on future legislation for improving the administration of justice.

"It remains for us to notice the question of Stamp Duties. If a plan such as has been suggested be adopted, there will be no difference on the Register between a sale and a mortgage; and the adoption of the plan might involve the necessity of an amalgamation of the stamp duties.

"The system cannot give immediate relief to the landowner; but he must bear in mind that his title at present is voluminous and complicated, and cannot be made simple, unless with the assistance of a Board of Commissioners at a great expense, or by the gradual and inexpensive operation of the system here proposed.

"An apprehension has been expressed that the Index would become wholly unmanageable in a few years, but we do not participate in this apprehension. The indexes of the public funds are so far from being unmanageable, that there is absolutely no difficulty in finding, in a few minutes, any account which may be asked for; and the indexes to the public funds are simply alphabetical lists of all persons in whose names any stock is standing. And there is no subdivision; whereas in the proposed indexes for land-transfer there will be a separate index for each county, and that index again will be subdivided into parishes; so that if a person wishes to ascertain whether A. is possessed of any land in any parish, he will merely have to search the index of that parish under the letter A.; and if the landowners of the most populous parish in England were to be arranged alphabetically, there would be very little difficulty in finding the individual name.

"It would, moreover, be very easy to subdivide the index of each letter, by classifying not only by the first letter of the name, but by the first vowel in the name, as, for instance, 'Throgmorton' would be found under the letter 'T' and the subdivision 'T.o.' This system is observed with advantage by the Bank of England.

"An objection has also been started, that the discussion and inquiry which would frequently arise on the rights and interests of parties having stop-orders would occasion the same expense as now.

"We think this objection is not well founded. Under the present system, not only have all parties legally and equitably interested in land to adjust their respective claims, but all the successive purchasers and mortgagees of that land for 50 or 60 years to come have, in their turn, to see that those claims were properly adjusted. Under the present system the purchaser or mortgagee would have nothing whatever to do with these questions. Whilst a 'stop' exists the land will be tied up, and when the 'stop' is gone the land may be transferred. The equity under stop-orders or distringases are adjusted once and for ever, and leave no stain or encumbrance on the title; but equities under the existing system live for half a century, and obtrude themselves upon every one who, during that period, may have anything to do with the land. It is difficult to conceive of a contrast more striking.

"If the efficacy of the system suggested should be doubted, it may be applied and tested in one county, as in the register county of Middlesex, before the system be extended to the whole kingdom. It may also be made optional for a time, for purchasers to adopt the system or not, and it may become compulsory when

the sufficiency and value of the system shall have been satisfactorily established by experience. There is, however, ground for apprehension that the efficiency of the plan cannot be fully tested by any partial adoption of it, and that the trial, if conducted by any one who has a preference for any other system, may not develop its advantages.

"A question remains to be mentioned which has not yet been here alluded to, but which has been much discussed with reference to the Registration of Assurances. Shall the Registry be central or local, or both central and local? Or, to put the question more accurately, shall there be

"One Central Registry for the whole kingdom; or,

"Several Central county Registries for the several subdivisions of the whole kingdom; or,

"One Central Registry for the whole kingdom, with branch offices in the principal towns throughout the kingdom?

"A central Registry for the whole kingdom would, of course, be established in the Metropolis; central county Registries would probably be in the largest, or most central, or most generally accessible town in the county.

"Great difference of opinion exists on the respective merits and disadvantages of Metropolitan and County Registries, and as much further light may yet be thrown on this subject, it has been thought desirable not to do more in this paper than to state that the subject has not been overlooked, and will require careful and disinterested consideration, if the system of land transfer here suggested shall be thought worthy of adoption.

"In this brief and necessarily very imperfect sketch, an attempt has been made to draw attention to the evils inseparable from the present system of conveyancing; to describe the advantages arising from the greater simplicity of transfer which stock possesses over land; to point out the difficulties of assimilation arising from the distinctions between land and stock, inherent in the two kinds of property; to combat the objections made to the investment of land in the names of trustees; and to suggest such alterations in the mode of transfer of land as shall gradually and eventually confer on land, as nearly as possible, the advantages enjoyed by stock in the simplicity of transfer; and to do this without diminishing the security of enjoyment and transmission now possessed by beneficial owners of land. It is hoped that if the plan proposed should, on further examination, be found open to insuperable objections, the suggestions offered may not be without their use, in assisting other minds, directed to the subject, to a more successful result."

## NEW ORDERS IN CHANCERY.

## DECREE OR ORDER.—APPEAL.—ENROLMENT.

THAT all and every the orders, rules, and directions hereinafter set forth shall henceforth be, and for all purposes be deemed and taken to be, General Orders and Rules of the High Court of Chancery, viz. :—

I. That no appeal from any decree, order, or dismissal, or any re-hearing of the case on which such decree, order, or dismissal is founded, shall be allowed, unless the same is set down for hearing, and the requisite notice thereof duly served, within five years from the date of any such decree, order, or dismissal respectively.

II. That all decrees and orders, and all dismissals, pronounced or made in any cause, claim or matter in this Court which shall be enrolled, shall be so enrolled within six calendar months after the same shall be so pronounced or made respectively, and not at any time after without special leave of the Court, such leave to be obtained in manner next hereinafter mentioned.

III. In case any party is desirous to enrol a decree, or order, or dismissal after the expiration of six calendar months from the time the same shall have been made, he shall obtain an order for that purpose, and which order, unless made by consent of the adverse party, or on motion and notice to all the parties, shall be a conditional order in the first instance, but shall become absolute without further order, unless cause is shown against it within 28 days after service of the order.

IV. That where a caveat is entered with the proper officer to stay the signing of the docket of the enrolment of any decree, order, or dismissal, such caveat shall be prosecuted with effect within 28 days after the docket of such decree, order, or dismissal shall be left to be signed with the proper officer by the party who entered the same, otherwise such caveat shall be of no force; and the docket of such decree, order, or dismissal may immediately after the expiration of the said 28 days be presented to be signed, as if no such caveat had been entered.

V. That no enrolment of any decree, order, or dismissal shall be allowed after the expiration of five years from the date thereof.

VI. That the Lord Chancellor, either sitting alone, or with the Lords Justices, or either of them, shall be at liberty, where it shall appear to him under the peculiar circumstances of the case to be just and expedient, to enlarge the periods hereinbefore appointed for a re-hearing, or an appeal, or an enrolment.

VII. That these orders shall take effect on and from the 28th day of October next.

## UNDER THE IMPROVEMENT OF THE JURISDICTION OF EQUITY ACT.

*Printing.*

I. Bills and claims are to be printed on

writing royal paper, quarto, in pica type, leaded; and the copy to be filed is to be interleaved with paper of the same description.

II. No costs are to be allowed, either as between party and party, or as between solicitor and client, for any written bill or written copy of a bill, filed under the 15 & 16 Vict. c. 86, s. 6, or for any written copy thereof, served upon any defendant thereto, or for any written brief of such bill, unless the Court shall, in disposing of the costs of the cause, direct the allowance thereof.

III. The Clerks of Records and Writs shall, at the expiration of 14 days from the filing of any written bill or written copy of a bill, take off the files of the Court, without further order, the bill or copy so filed, unless a printed copy thereof shall in the meantime have been filed, and the plaintiff in the suit, or his solicitor, who shall personally have undertaken to file such printed copy, shall pay to the defendant all the costs incurred by him in the suit, such costs to be taxed by the Taxing Master, without further order, upon production to him of the certificate of the Clerk of Records and Writs, that a printed copy of the bill has not been filed pursuant to such undertaking, and to be recoverable in like manner as costs ordered to be paid by a party in a suit to another party in a suit are now recoverable.

IV. In lieu of the fees now payable to solicitors for instructions for bills, for engrossing bills and claims, for copies of bills and claims, for abbreviating bills and making a brief thereof, solicitors shall be entitled to charge, and be allowed in suits commenced after these Orders come into operation, the fees specified in Schedule (A.) to these Orders.

V. The payment to be made by the defendant to the plaintiff for printed copies of the bill or claim shall be at the rate of one halfpenny per folio.

VI. No defendant shall be at liberty to demand from the plaintiff more than ten printed copies of his bill or claim.

*Amendment of Bills and Claims.*

VII. Where, according to the present practice of the Court, an amendment of a bill or claim may be made without a new engrossment thereof, a bill or claim may be amended by written alterations in the printed bill of complaint or claim so to be filed, and by additions on the paper to be interleaved therewith, according to the directions of Order I.

VIII. The practice of amending a defendant's copy of the bill shall, with respect to the amendment of bills filed after these orders come into operation, be abolished.

IX. A copy of an amended bill or claim, whether upon an amendment by a reprint, or by such alterations and additions as mentioned in Order VII., is to be served upon the defendant or his solicitor; and such copy may be partly printed and partly written, if the amendment is not made by a reprint: but in every case the copy to be served is to be stamped with the proper stamp by one of the Clerks of

Records and Writs, indicating the filing of such amended bill or claim, and the date of the filing thereof.

X. In all cases where, according to the present practice of the Court, a subpoena to appear to and to answer an amended bill may be served upon the solicitor of a defendant, service upon the defendant's solicitor of a copy of an amended bill, whether wholly printed, or partly printed and partly written, shall be good service on the defendant.

XI. Where a defendant has appeared in person to any bill, service at the address for service of such defendant of a copy of an amended bill, whether wholly printed, or partly printed and partly written, shall be good service on the defendant.

#### *Limitation of preceding Orders.*

XII. None of the preceding orders shall apply to bills or claims filed before these Orders come into operation, though afterwards amended; and the existing practice of the Court is to continue in force, with reference to the amendment of such bills and claims.

XIII. The existing practice of the Court with reference to issuing and serving writs of subpoena to appear to and answer bills and writs of summons on claims is also to continue in force with respect to bills and claims filed before these orders come into operation.

#### *Form of Bill.*

XIV. Bills may be in a form similar to the form set out in Schedule (B.) to these Orders, with such variations as the nature and circumstances of each particular case may require.

#### *Interrogatories.*

XV. The interrogatories for the examination of the defendant to a bill may be in a form similar to the form set out in Schedule (C.) to these Orders, with such variations as the nature and circumstances of each particular case may require.

XVI. In cases in which the plaintiff requires an answer to any bill from any defendant or defendants thereto, the interrogatories for the examination of such defendant or defendants are to be filed within eight days after the time limited for the appearance of such defendant or defendants.

XVII. If the defendant appear in person, or by his own solicitor, within the time limited for that purpose by the rules of the Court, the plaintiff is, within eight days after the time allowed for such appearance, to deliver to the defendant or defendants so required to answer, or to his or their solicitor or solicitors, a copy of the interrogatories so filed as aforesaid, or of such of them as the particular defendant or defendants shall be required to answer. And the copy so to be delivered is to be examined with the original, and the number of folios counted by the Clerks of Records and Writs, who on finding that such copy is duly stamped and properly written are to mark the same as an office copy.

XVIII. If any defendant to a suit com-

menced by bill do not appear in person, or by his own solicitor, within the time allowed for that purpose by the rules of the Court, and the plaintiff has filed interrogatories for his examination, the plaintiff may deliver a copy of such interrogatories so examined and marked as aforesaid, to the defendant, at any time after the time allowed to such defendant to appear and before his appearance in person or by his own solicitor; or the plaintiff may deliver a copy of such interrogatories so examined and marked as aforesaid, to the defendant or his solicitor, after the appearance of such defendant in person or by his own solicitor, but within eight days after such appearance.

XIX. A defendant required to answer a bill must put in his plea, answer, or demurrer thereto, not demurring alone, within 14 days from the delivery to him or his solicitor of a copy of the interrogatories which he is required to answer; but the Court shall have full power to enlarge the time, from time to time, upon application being made to the Court for that purpose.

XX. After the time allowed by Order XVI. for filing interrogatories for the examination of any defendant, no interrogatories are to be filed for the examination of such defendant, without special leave of the Court, to be applied for upon notice of motion.

#### *Form of Answer.*

XXI. Answers may be in a form similar to the form set out in Schedule (D.) to these Orders, with such variations as the nature and circumstances of each particular case may require.

#### *Motion for Decree.*

XXII. One month's notice is to be given by the plaintiff to the defendant or defendants, of the motion for a decree or decretal order.

XXIII. The affidavits to be used in support of such motion are to be filed before the service of such notice, and a list of such affidavits is to be set forth at the foot of such notice.

XXIV. The defendant, within 14 days after service of such notice, is to file his affidavits in answer, and to furnish the plaintiff or his solicitor with a list thereof.

XXV. Within seven days after the expiration of such 14 days the plaintiff is to file his affidavits in reply, which affidavits shall be confined to matters strictly in reply, and he is to furnish the defendant or his solicitor with a list thereof; and except so far as these affidavits are in reply, they are not to be regarded by the Court, unless upon the hearing of the motion the Court shall give leave to the defendant to answer them, and in that case the costs of such affidavits, and of the further affidavits consequent upon them, shall be paid by the plaintiff, unless the Court shall otherwise order.

XXVI. No further evidence on either side is to be used upon such motion for a decree or decretal order, without leave of Court.

XXVII. Every notice of motion for a decree or decretal order is to be entered with the Re-

gistrar, who is to make out a list of such motions, and the same are to be heard according to such list, unless the Court shall make order to the contrary.

XXVIII. Where a defendant shall not have been required to answer and shall not have answered the plaintiff's bill, so that under the 15 & 16 Vict. c. 86, s. 26, he is to be considered as having traversed the case made by the bill, issue is nevertheless to be joined by filing a replication in form or to the effect of the replication now in use.

*Dismissal for want of Prosecution.*

XXIX. A defendant to a suit commenced by bill, who shall not have been required to answer the bill, and shall not have answered the same, shall be at liberty to apply for an order to dismiss the bill for want of prosecution, at any time after the expiration of three months from the time of his appearance, unless a motion for a decree or decretal order shall have been set down in the meantime, or the cause shall have been set down to be heard; and the Court may, upon such application, if it shall think fit, make an order dismissing the bill, or make such other order or impose such terms as may appear just and reasonable.

*Impertinence.*

XXX. The application to be made for the costs of any impertinent matter introduced into any bill, answer, or other proceeding, is to be made at the time when the Court disposes of the costs of the cause or matter, and not at any other time.

*Evidence.*

XXXI. The time within which the plaintiff in any suit commenced by bill is to give the defendant notice of the mode in which he desires that the evidence to be adduced in the cause shall be taken, is to be seven days after issue joined therein; and if the plaintiff shall not, within such time, give any such notice, or if the plaintiff shall give such notice, and shall therein desire the evidence to be adduced upon affidavit, the plaintiff and defendant respectively shall be at liberty to verify their respective cases by affidavit, unless the defendant, or some or one of the defendants if more than one, shall, within 14 days after the expiration of the said period of seven days, give notice to the plaintiff, or his solicitor, that he or they desire the evidence to be oral.

XXXII. The evidence on both sides in any cause to be used at the hearing thereof, whether taken orally (and including the cross-examination and re-examination of any witness or witnesses) or taken upon affidavit, is to be closed within nine weeks after issue joined therein, except that any witness who has made an affidavit intended to be used by any party to such cause at the hearing thereof shall be subject to cross-examination within one month after the expiration of such period of nine weeks.

XXXIII. No affidavit filed before issue joined in any cause shall be received or receivable at the hearing thereof, unless within one

month after issue joined notice in writing shall have been given by the party intending to use the same, to the opposite party of his intention in that behalf.

XXXIV. Any party desiring to cross-examine a witness who has made an affidavit in any cause intended to be used at the hearing thereof, shall give 48 hours' notice to the party on whose behalf such affidavit was filed, or to the party intending to use the same, of the time and place of such intended cross-examination, in order that such party may, if he shall think fit, be present at such cross-examination.

XXXV. The re-examination of any such witness is immediately to follow his cross-examination, and is not to be delayed to a future period.

XXXVI. Any party in any cause or matter requiring the attendance of any witness before an examiner, for the purpose of his being examined or cross-examined, with a view to his evidence being used upon any claim, motion, petition, or other proceeding before the Court, not being the hearing of a cause, shall give to the opposite party or parties 48 hours' notice at least of his intention to examine such witness, and of the time and place of such examination, unless the Court shall in any case think fit to dispense with such notice.

XXXVII. And where it is desired to cross-examine any party, whether a party to the cause or matter or not, who has made an affidavit to be used, or which shall be used on any claim, motion, petition, or other proceeding before the Court, not being the hearing of a cause, the party desiring so to cross-examine such deponent shall give such notice to the opposite party as is required by Order XXXIV., with reference to the cross-examination of a witness who has made an affidavit to be used on the hearing of a cause.

XXXVIII. All the above Orders with reference to the examination, cross-examination, and re-examination of witnesses, shall extend and be applicable to evidence taken in any cause subsequently to the hearing thereof.

XXXIX. In suits in which issue shall have been joined when these Orders come into operation, the evidence to be used at the hearing of the cause shall be taken according to the existing practice of the Court, unless the parties shall consent, or the Court shall order, that the same shall be taken in the mode prescribed by the Act 15 & 16 Vict. c. 86, and these Orders.

*Adding to Decree.*

XL. The time within which a party served with notice of a decree under section 48 of the above Act may apply to the Court to add to the decree, is to be one month after such service.

XLI. A memorandum of the service upon any person or persons of notice of the decree in any suit under the said section, rule 8, is to be entered in the office of the Clerks of Records and Writs upon due proof by affidavit of such service.

*Summons.*

XLII. The 'summons to be obtained under section 45 of the above Act may be in a form similar to the form set forth in Schedule (E.) to these Orders, with such variations as the circumstances of the case may require.

*Revivor and Supplement.*

XLIII. Any party under no disability, or under the disability of coverture, who may be served with an order to revive any suit, or to carry on the proceedings therein, may apply to the Court to discharge such order within twelve days after such service; and any party being under any disability, other than coverture, who may be so served, may apply to the Court to discharge such order within twelve days after the appointment of a guardian or guardians *ad litem* for such party; and until such period of twelve days shall have expired such order shall have no force or effect as against such last-mentioned party.

*New Facts or Circumstances.*

XLIV. If the plaintiff in any cause, which is not in such a state as to allow of an amendment being made in the bill, shall desire to state or put in issue any facts or circumstances which may have occurred after the institution of the suit, he may state the same, and put the same in issue by filing in the Record and Writ Clerk's office a statement, either written or printed, to be annexed to the bill; and such proceedings by way of answer, evidence, and otherwise, are to be had and taken upon the statement so filed, as if the same were embodied in a supplemental bill: provided always, that the Court may make any order which it shall think fit for accelerating the proceedings thereunder, or proceedings therein, in any manner which may appear just and practicable.

*Injunction.*

XLV. No injunction for stay of proceedings at law is to be granted as of course for default of appearance or answer to the bill.

*Power of Court.*

XLVI. The power of the Court to enlarge or abridge the time for doing any act or taking any proceedings in any cause or matter, upon such, if any, terms as the justice of the case requires, is unaffected by these Orders.

*Commencement of Orders.*

XLVII. These Orders shall take effect and come into operation on the 2nd day of November, 1852.

*Interpretation.*

XLVIII. In these Orders the following words have the several meanings hereby assigned to them, over and above their several ordinary meanings, unless there be something in the subject or context repugnant to such construction, viz.:

1. Words importing the singular number include the plural number, and words importing the plural number include the singular number.

2. Words importing the masculine gender include females.

3. The word "bill" includes "information."

4. The word "party" includes a body politic or corporate.

5. The word "affidavit" includes "affirmation."

ST. LEONARDS, C.  
JOHN ROMILLY, M. R.  
J. L. KNIGHT BRUCE, L. J.  
CRANWORTH, L. J.  
G. J. TURNER, V. C.  
RICHARD T. KINDERSLEY, V. C.  
JAMES PARKER, V. C.

August 7, 1852.

*SCHEDULE (A).**Table of Fees.*

|                                                                                                                                                                                                                                                        | £ | s. | d. |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---|----|----|
| For instructions for bill . . . . .                                                                                                                                                                                                                    | 1 | 14 | 0  |
| For making a copy of a bill or claim for the printer, per folio . . . . .                                                                                                                                                                              | 0 | 0  | 4  |
| For correcting the proof sheet, per folio . . . . .                                                                                                                                                                                                    | 0 | 0  | 2  |
| For printer's bill (as paid), deducting any copies paid for by the defendant . . . . .                                                                                                                                                                 |   |    |    |
| For amending each copy of a bill or claim to serve where there is no reprint . . . . .                                                                                                                                                                 | 0 | 13 | 4  |
| Instructions for brief to be allowed on a replication being filed, or on a motion for a decree on a bill, or in an injunction cause on moving for the injunction; but so that this fee shall be charged once only in the progress of a cause . . . . . | 1 | 1  | 0  |
| For amending each brief of a bill or claim where there is no reprint . . . . .                                                                                                                                                                         | 0 | 13 | 4  |
| For perusing and considering the bill on behalf of each defendant, or set of defendants, appearing by the same solicitor . . . . .                                                                                                                     | 1 | 1  | 0  |

*SCHEDULE (B).**Form of Bill.*

In Chancery.  
John Lee . . . . . Plaintiff.  
James Styles }  
and } . . . . . Defendants.  
Henry Jones }

*Bill of Complaint.*

To the Right Honourable Edward Burtenshaw, Baron St. Leonards, of Slaughtam, in the County of Sussex, Lord High Chancellor of Great Britain,

Humbly complaining, sheweth unto his Lordship, John Lee, of Bedford Square, in the County of Middlesex, Esq., the above named plaintiff, as follows:—

1. The defendant James Styles, being seised in fee simple of a farm called Blackacre, in the parish of A. in the county of B., with the appurtenances, did, by an indenture dated the 1st of May, 1850, and made between the defendant James Styles of the one part, and the

plaintiff of the other part, grant and convey the said farm with the appurtenances unto, and to the use of, the plaintiff, his heirs and assigns, subject to a proviso for redemption thereof, in case the defendant James Styles, his heirs, executors, administrators or assigns, should on the 1st of May, 1851, pay to the plaintiff, his executors, administrators, or assigns, the sum of 5,000*l.*, with interest thereon, at the rate of 5*l.* per centum per annum, as by the said indenture will appear.

2. The whole of the said sum of 5,000*l.*, together with interest thereon at the rate aforesaid, is now due to the plaintiff.

3. The defendant, Henry Jones, claims to have some charge upon the farm and premises comprised in the said indenture of mortgage of the 1st of May, 1850, which charge is subsequent to the plaintiff's said mortgage.

4. The plaintiff has frequently applied to the defendants, James Styles and Henry Jones, and required them either to pay the said debt, or else to release the equity of redemption of the premises, but they have refused so to do.

5. The defendants, James Styles and Henry Jones, pretend that there are some other mortgages, charges, or incumbrances affecting the premises, but they refuse to discover the particulars thereof.

6. There are divers valuable oak, elm, and other timber, and timber-like trees growing and standing on the farm and lands comprised in the said indenture of mortgage of the 1st of May, 1850, which trees and timber are a material part of the plaintiff's said security; and if the same or any of them were felled and taken away, the said mortgaged premises would be an insufficient security to the plaintiff for the money due thereon.

7. The defendant, James Styles, who is in possession of the said farm, has marked for felling a large quantity of the said oak and elm-trees and other timber, and he has, by hand bills, published on the 2nd December instant, announced the same for sale, and he threatens and intends forthwith to cut down and dispose of a considerable quantity of the said trees and timber on the said farm.

#### Prayer.

The plaintiff prays as follows:—

1. That an account may be taken of what is due for principal and interest on the said mortgage.
2. That the defendants, James Styles and Henry Jones, may be decreed to pay to the plaintiff the amount which shall be so found due, together with his costs of this suit, by a short day to be appointed for that purpose, or, in default thereof, that the defendants James Styles and Henry Jones, and all persons claiming under them, may be absolutely foreclosed of all right and equity of redemption in or to the said mortgaged premises.
3. That the defendant James Styles may be restrained by the injunction of this honourable Court from felling, cutting, or disposing

of any of the timber or timber-like trees now standing or growing in or upon the said farm and premises comprised in the said indenture of mortgage, or any part thereof.

4. That the plaintiff may have such further or other relief as the nature of the case may require.

Names of defendants.

The defendants to this bill of complaint are,

James Styles,  
Henry Jones.

Y. Y.,  
(Name of counsel.)

NOTE.—This bill is filed by Messrs. A. B. and C. D., of Lincoln's Inn, in the county of Middlesex, solicitors for the above-named plaintiff.

#### SCHEDULE (C).

##### Form of Interrogatories.

In Chancery.

|                    |             |             |
|--------------------|-------------|-------------|
| John Lee           | . . . . .   | Plaintiff.  |
| James Styles       | } . . . . . | Defendants. |
| and<br>Henry Jones |             |             |

Interrogatories for the examination of the above-named defendants in answer to the plaintiff's bill of complaint.

1. Does not the defendant Henry Jones claim to have some charge upon the farm and premises comprised in the indenture of mortgage of the 1st of May, 1850, in the plaintiff's bill mentioned?

2. What are the particulars of such charge, if any, the date, nature and short effect of the security, and what is due thereon?

3. Are there or is there any other mortgages or mortgage, charges or charge, incumbrances or incumbrance, in any and what manner affecting the aforesaid premises, or any part thereof?

4. Set forth the particulars of such mortgages or mortgage, charges or charge, incumbrances or incumbrance; the date, nature, and short effect of the security; what is now due thereon; and who is or are entitled thereto respectively; and when and by whom, and in what manner, every such mortgage, charge, or incumbrance was created.

The defendant James Styles is required to answer all these interrogatories.

The defendant Henry Jones is required to answer the interrogatories numbered 1 and 2.

Y. Y.,  
(Name of counsel.)

#### SCHEDULE (D).

##### Form of Answer.

In Chancery.

|                    |             |             |
|--------------------|-------------|-------------|
| John Lee           | . . . . .   | Plaintiff.  |
| James Styles       | } . . . . . | Defendants. |
| and<br>Henry Jones |             |             |

The answer of James Styles, one of the above-named defendants to the bill of complaint of the above-named plaintiff.

In answer to the said bill, I, James Styles, say as follows :—

1. I believe that the defendant, Henry Jones, does claim to have a charge upon the farm and premises comprised in the indenture of mortgage of the 1st of May, 1850, in the plaintiff's bill mentioned.

2. Such charge was created by an indenture dated the 1st of November, 1850, made between myself of the one part, and the said defendant Henry Jones of the other part, whereby I granted and conveyed the said farm and premises, subject to the mortgage made by the said indenture of the 1st of May, 1850, unto the defendant Henry Jones for securing the sum of 2,000*l.* and interest at the rate of 5*l.* per centum per annum, and the amount due thereon is the said sum of 2,000*l.*, with interest thereon, from the date of such mortgage.

3. To the best of my knowledge, remembrance, and belief, there is not any other mortgage, charge, or incumbrance affecting the aforesaid premises.

M. N.  
(Name of counsel.)

SCHEDULE (E).  
*Form of Summons.*

In Chancery.

In the matter of the estate of John Thomas, late of the parish of A., in the county of B., deceased.

Joseph Wilson  
against  
William Jackson.

Upon the application of Joseph Wilson, of Russell Square, in the county of Middlesex, Esq., who claims to be a creditor upon the estate of the above-named John Thomas, let William Jackson, the executor of the said John Thomas, attend at my chambers [in the Rolls Yard, Chancery Lane, Middlesex], [or at No. —, — square, Lincoln's Inn, Middlesex] on the day of —, at — of the clock in the afternoon, and show cause, if he can, why an order for the administration of the personal estate of the said John Thomas, by the High Court of Chancery, should not be granted.

Dated the — day of — 1852.  
JOHN ROMILLY, Master of the Rolls,  
*or*,  
G. J. TURNER, Vice-Chancellor, *or*,  
RICHD. T. KINDERSLEY, Vice-Chancellor, *or*,  
JAMES PARKER, Vice-Chancellor.

NOTE.—If the above-named William Jackson does not attend either in person or by his solicitor, at the time and place above-mentioned, such order will be made in his absence as the Judge may think just and expedient.

This summons was taken out by A. and B., of Lincoln's Inn, in the county of Middlesex, solicitors for the above-named Joseph Wilson.

## THE NEW VICE-CHANCELLOR.

It is confidently stated that Mr. Stuart, the eminent Queen's Counsel and Member for Bury St. Edmunds, will be the New Vice-Chancellor, and as evidence thereof the learned gentleman's constituents are preparing to find a Conservative successor to represent them. Undoubtedly Mr. Stuart is entitled to the promotion, if he thinks proper to accept it: he has always been one of the most zealous and consistent supporters of the party now in power. He was called to the Bar on the 23rd November, 1819, and received the distinction of Q. C. in Hilary Vacation, 1839. He ranks after Mr. Purton Cooper, and next before Mr. Bethell.

## NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

TURNPIKE TRUSTS ARRANGEMENT.  
15 & 16 VICT. c. 33.

An Act to confirm certain Provisional Orders made under an Act of the last Session, "to facilitate Arrangements for the Relief of Turnpike Trusts, and to make certain Provisions respecting Exemptions from Tolls." [30th June, 1852.]

Whereas the Right Honourable Spencer Horatio Walpole, one of her Majesty's Principal Secretaries of State, has, in pursuance of the Act of the last Session of Parliament, "to facilitate arrangements for the Relief of Turnpike Trusts, and to make certain Provisions respecting Exemptions from Tolls," made certain provisional orders under his hand to reduce the rate of interest, and for extinguishing the arrears of interest on the mortgage debts charged or secured on the tolls or revenues of certain turnpike roads, and has caused such orders to be published in the *London Gazette*, and in newspapers circulating in the neighbourhood of such roads, and the dates of such provisional orders, and the acts under which the tolls or revenues on which such debts are charged or secured are levied or raised, together with the amount to which the rate of interest on such debts is reduced, and the day up to which the interest and arrears of interest on such debts are extinguished or proposed to be extinguished by such orders, are mentioned in the Schedule to this Act: And whereas it is expedient that the said Provisional orders should be confirmed, and made absolute: Be it therefore enacted, That the said provisional orders are hereby confirmed, and made absolute, and shall be as binding and of the like force and effect as if the provisions thereof had been expressly enacted by Parliament.



## SCHEDULE.

| Date of Provisional Order. | TITLE OF LOCAL ACT.                                                                                                                                                                                                                                                                                                                                    | Amount of Principal Debt. | Interest to be reduced to the following Rates per Annum. | Arrears of Interest to be extinguished to the following Dates. |
|----------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------|----------------------------------------------------------|----------------------------------------------------------------|
| 1852.                      |                                                                                                                                                                                                                                                                                                                                                        | £ s.                      |                                                          |                                                                |
| 24 April                   | 55 G. 3, c. 48, "An Act for Repairing the Road from Sutton in the County of Surrey, through the Borough of Reigate by Sidlow Mill, to Povey Cross and several other Roads therein mentioned, in the same County" .. .. .                                                                                                                               | 14,180 0                  | 3l. per Cent.                                            | No Arrears.                                                    |
| 24 April                   | 56 G. 3, c. 47, "An Act for enlarging the Term and Powers of Two Acts of his present Majesty, for repairing and widening the Road from Aldermaston to Basingstoke, and several other Roads therein mentioned, in the Counties of Berks and Southampton," as far as the same relates to the First District of Road .. .. .                              | 2,960 0                   | 2l. per Cent.                                            | 1852.<br>31 Dec.                                               |
| 24 April                   | 3 G. 4, c. 99, "An Act for amending and repairing the Roads from Minehead in the County of Somerset, to Batham Bridge in the Town of Bampton in the County of Devon, and for making a new Branch of Road to communicate therewith .. .. .                                                                                                              | 12,945 0                  | 3l. per Cent.                                            | 31 Dec.                                                        |
| 24 April                   | 6 G. 4, c. 46, "An Act for repairing the Road from Kingston-upon-Thames to Leatherhead in the County of Surrey" .. .. .                                                                                                                                                                                                                                | { 380 0<br>9,821 5        | 3l. per Cent.<br>2l. 10. per Cent.                       | 31 Dec.<br>31 Dec.                                             |
| 24 April                   | 7 & 8 G. 4, c. 4, "An Act for making and maintaining a Turnpike Road from Temple Normanton in the Parish of Chesterfield, to the Mansfield and Tibshelf Turnpike Road at or near Tibshelf Side Gate in the County of Derby" .. .. .                                                                                                                    | 3,086 0                   | 2l. per Cent.                                            | 31 Dec.                                                        |
| 24 April                   | 9 G. 4, c. 84, "An Act for more effectually repairing the Dunster, Stowey, Watchet, and Crowcombe Districts of the Minehead Roads in the Counties of Somerset and Devon, and for making and repairing several other Roads communicating with the same Districts of Road or some of them," as far as the same relates to the Crowcombe District .. .. . | 4,859 10                  | No reduction.                                            | 31 Dec.                                                        |
| 24 April                   | 1 W. 4, c. 68, "An Act for consolidating the Trusts of the several Turnpike Roads in the neighbourhood of Cheadle in the County of Stafford, and for making Deviations and new Branches to and from the same," as far as the same relates to the Third or Dithorn District .. .. .                                                                     | 1,740 0                   | 1l. 10s. per Cent.                                       | 31 Dec.                                                        |
| 24 April                   | 1 W. 4, c. 68, "An Act for consolidating the Trusts of the several Turnpike Roads in the neighbourhood of Cheadle in the County of Stafford, and for making Deviations and new Branches to and from the same," as far as the same relates to the Fourth or Alton District .. .. .                                                                      | 5,224 10                  | 2l. 10s. per Cent.                                       | 31 Dec.                                                        |

## NOTICES OF NEW BOOKS.

*A Treatise on Investments: being a Popular Exposition of the Advantages and Disadvantages of each kind of Investment, and of its Liability to Depreciation and Loss.* By ROBERT ARTHUR WARD, Solicitor, Maidenhead, Berkshire. Second Edition, greatly enlarged. London: Effingham Wilson; Simpkin, Marshall, & Co. 1852. Pp. xx. 289.

WE reviewed, at p. 132, vol. 43, the first edition of this very useful Treatise. The following additional chapters have been added to the work:—

On the consequences of the Gold Discovery on the value of Property by the depreciation of gold.

On Railway Shares, including sketches of the principal railway companies and tables of their ordinary shares and stocks.

On Mining Speculations.

On Building Societies.

On Turnpike Bonds.

Large additions have also been made to the chapters on Joint Stock undertakings, and on Life Insurance Policies, and the calculations and tables have been carefully revised and tables added.

In reference to the probable depreciation of gold, Mr. Ward observes:—

"As a mere matter of caution, I would recommend those mortgagees, who lend their money for a period of years, to stipulate that they should have power to require the payment of their money in silver; or, what would be still better, that the mortgage should not be redeemed, except by the payment of such a sum of money as would at that time purchase a stated number of quarters of corn. This latter stipulation would be fair for both the mortgagor and the mortgagee, as the same standard, namely, the price of corn, would generally regulate the value of the security, and the sum charged upon it."

We would advise all those who are desirous of acquiring sound information, or of being competent to advise their clients, upon the subject, to peruse this valuable treatise on investments.

## LAW OF ATTORNEYS.

## LIEN.—SET OFF.

A CAUSE and all matters in difference between A. and B. were referred to an arbitrator, who was to have power to direct the verdict to be entered for A. or for B.,—the costs of the suit to abide the event of the award, and the costs of the reference and award to be in the discretion of the arbitra-

tor. The arbitrator, by his award, directed a verdict to be entered for B., and awarded that 303*l.* 15*s.* was due from B. to A. in respect of the matters in difference, and which sum he ordered to be paid by B. to A. on a given day. The question was whether B. was entitled to deduct from the sum so awarded to be paid by him, the amount of his taxed costs of the cause, without regard to the lien of A.'s attorney for his costs of the cause and of the reference, and a rule was obtained by the attorneys calling on the plaintiff and his assignees, and on the defendant to show cause why the defendant should not pay to them the amount of their costs. The following judgment was pronounced by Lord Chief Justice Jervis:—

"I am of opinion that this rule must be discharged. The cause and all matters in difference between the parties were referred to arbitration, the costs of the cause to abide the event of the award, and the costs of the reference and award to be in the discretion of the arbitrator. The arbitrator decides the action in favour of the defendant, West, and directs that the verdict be entered for him; and, as to the matters in difference, he awards 303*l.* 15*s.* to be paid by West to Dunn on a certain day, and at a certain place; and he directs that, at the same time and place, Dunn shall pay to West the costs of the action, to be in the meantime taxed by the proper officer. There is no direction in the award that one sum shall be *pro tanto* set-off against the other; nor did the order of reference give the arbitrator power so to direct. The costs of the action having been taxed at 180*l.*, the balance (123*l.* 15*s.*) was paid by West to Dunn, and this application seeks to compel West to pay the residue of the 303*l.* 15*s.* so awarded in respect of the matters in difference. Now, it is to be observed, that the application is made, not by Dunn, the party to whom the money was directed by the award to be paid, but by Dunn's attorneys, who claim a lien upon it for costs. The claim rests upon the 93rd Rule of Hilary Term, 2 Wm. 4, which provides that 'no set-off of damages or costs between parties shall be allowed, to the prejudice of the attorney's lien for costs in the particular suit against which the set-off is sought.' The origin and foundation of that rule was this:—In the Court of King's Bench, in setting off costs or damages between the parties, the lien of the attorney was respected: see Tidd's Practice, 9th edit., pp. 339, 992. In this Court, it seems to have been the uniform practice to disregard the attorney's lien: *Figes v. Adams*, 4 Taunt. 633: though Lord Eldon, in *Hall v. Ody*, 2 B. and P. 28, expressed his disapprobation of it. The Court of Exchequer was without any settled practice upon the subject; following sometimes the practice of the Court of King's Bench, and sometimes that of this Court. The object of the rule was, to render the practice of the

these Courts in this respect uniform. The present application, however, is not one of the kind contemplated by the rule; and the analogy sought to be drawn from the rule is not at all applicable to a case like this. I think we have no authority to do what we are asked to do."

*Dunn v. West*, 10 C. B. 420.

## LAW ASSOCIATION

### FOR THE BENEFIT OF THE WIDOWS AND FAMILIES OF PRO- FESSIONAL MEN.

*Report of the Board of Directors to the Annual General Court, Tuesday, May 11th, 1852.*  
J. O. JONES, Esq., in the Chair.

THE Directors have the satisfaction, on the present occasion, to announce to the Members at large a continuance of the prosperity of the Association.

During the year the 3 per cent. Reduced Annuities belonging to the Association have been transposed into 3½ per cents., thus placing the whole funded property in that stock. The Directors have been enabled to make a further purchase of 304*l.* 18*s.* 6*d.* during the year, and thereby the amount has reached the sum of 21,188*l.* 2*s.* 6*d.*, 3½ per cents., yielding an income of 688*l.*, besides annual subscriptions amounting to 501*l.* 18*s.*

In addition to this annual income the directors are much gratified at having to report the following donations, namely: 100*l.* from Sir Charles Ogle and H. Denton, Esq., the executors of the late Mrs. Anna Maria Ogle, in the benevolent exercise of a discretion which that lady had confided to them; 21*l.* from Sir C. M. Clarke, Bart.; and 5*l.* 5*s.* from Mr. Charles Sweeting.

Of the handsome donation spontaneously bestowed by Sir Charles Clarke, the Society has peculiar reason to be proud, as a substantial proof that its proceedings are sanctioned by distinguished approval beyond the limits of the Legal Profession.

The sum of 21*l.* 7*s.* has been received from the estate of the late Mr. Joseph Roberts, of Queen Square, in part payment of a revocatory legacy of 100*l.* left by him to the Association many years since.

The Directors have to report that no new case of the primary class has come before them during the year; and that it is now three years since any application of that description was made.

In one instance during the year, the widow of a Member has received an additional grant of 50*l.* to assist her in releasing her furniture from the claims of her late husband's creditors, some of them agreeing to give up their share of the valuation. And in another case the Board have felt it to be their duty, as stewards of the funds placed at their disposal, to reduce the allowance, in consequence of the widow's means from other sources being improved.

The outlay in this branch of relief has been 845*l.*

The sum voted at the last Annual Meeting for the benefit of non-members' widows and families was 200*l.*, the whole of which has been applied in cases of that description; and the Directors venture to recommend that a similar grant be made on the present occasion.

The Directors have had under their consideration the subject of the Annual Subscriptions; and on the Report of a Committee appointed to inquire into the usual mode of collection, some new regulations are now submitted to the General Meeting for approval, having for their object a more convenient system of collection, and the more equal distribution of the income of the Association over the financial year.

Since the last General Meeting, eleven new Members have been elected; and the directors trust that every Member will use his best endeavours to promote the success of the charity, by inducing his professional friends to manifest a similar concern for its welfare to that which has been found even out of the Profession.

(By order of the Board),

JOHN MURRAY, Secretary.

## RECENT DECISIONS IN THE SUPERIOR COURTS.

### AND SHORT NOTES OF CASES.

#### Lord Chancellor.

*Stronghill v. Anstey.* July 10, 12, 1852.

TRUSTEES FOR SALE.—POWER TO RAISE MONEY ON MORTGAGE.—LEASEHOLDS.—PURCHASER'S LIABILITY AS TO PURCHASE-MONEY.

On appeal from, and reversing, the decision of Vice-Chancellor Knight Bruce, held that trustees for sale under a will of leaseholds have no power to raise money by way of mortgage upon security thereof.

Held, also, that where a testator devises to trustees for sale estate charged with the payment of debts and legacies, a purchaser is not bound to see to the application of the purchase-money.

Where trustees of a will raised money for the purposes thereof 16 years after the death of the testator, held that the parties making the advance were bound to see the proposed security was within the trusts of the will.

THIS was an appeal from the decision of Vice-Chancellor Knight Bruce on August 9, 1851, upon a claim to enforce an equitable mortgage. It appeared that the testator, George Anstey, by his will, dated August 1, 1821, after appointing executors and trustees, with power to appoint new trustees when necessary, gave all the residue of his personal estate to his trustees upon trust to sell and convert into money and invest the same in the

public funds or on real securities, and to stand possessed of the same upon trust to pay the testator's funeral and testamentary expenses, and all his just debts, and the trustees were authorised to give discharges to the purchasers of the leasehold estate. It appeared that the testator's son and Mr. Hobson had been appointed trustees in September, 1836, upon the death of the sole acting trustee, and that the personal estate, including two leasehold houses, Nos. 35 & 39, Tavistock Square, were assigned to such new trustees. In 1842, two sums of 1,800*l.* and 1,000*l.* were borrowed by Mr. Hobson from the plaintiffs for the purposes of the will, upon security of the houses, and the interest was duly paid until 1848, when Hobson absconded, and it was then ascertained he had applied the money to his own use, and the defendant, who was a residuary legatee, was appointed trustee by the Court. The plaintiffs then filed their claim to enforce the equitable mortgage, and on the Vice-Chancellor making a decree in their favour, this appeal was presented.

*Malins* and *T. E. Lloyd* for the plaintiffs; *James Russell, Chandless, Glasse, and Greene* for the appellants.

*Forbes v. Peacock*, 12 Sim. 528; 1 Phill. 717; *Haldenby v. Spofforth*, 1 Beav. 390; *Page v. Adam*, 4 Beav. 269; *Johnson v. Ken- nett*, 3 Myl. & K. 624; *Eland v. Eland*, 4 Myl. & C. 420; *Watkins v. Cheek*, 2 S. & St. 199; *Mills v. Banks*, 3 P. Wms. 1; *Ball v. Harris*, 4 Myl. & Cr. 264; *Earl of Oxford v. Earl of Albemarle*, 26 Law Journ., N. S., Ch., 396; *Jones v. Smith*, 1 Hare, 43, were cited.

*Cur. ad. vult.*

The Lord Chancellor said, the Court could not lay it down as a rule that trustees for sale had not power in any case to make a mortgage, but there must be circumstances shown to justify such a departure from the testator's intention. Where, however, as in the present case, there was a trust for sale out and out of leaseholds, which were being depreciated by the lapse of time, they could not be permitted to remain unconverted, and especially since nothing else but an absolute sale would carry out the intentions of the testator as to the disposal of the proceeds. The trusts of the will did not therefore authorise a mortgage, and the transactions for that purpose could not be maintained. This opinion decided the question raised on the plaintiffs' claim, but the case had also been argued upon the ground the plaintiffs were not bound to see to the application of the mortgage-money, and were entitled to re-payment. A purchaser must be discharged, either because he had seen to the application of the purchase-money, because there were no debts remaining undischarged at the time of purchase, or (and which was the sounder and better reason) because the testator, by directing the sale of his estate charged with the payment of debts and legacies, shows his intention to give his trustees a power to receive the purchase-money, and that no obligation should be thrown on the purchaser to see

to its application. The question had, however, nothing to do with the present case, but it must be observed that where parties advanced money after the lapse of such a period as 16 years since the death of the testator they were bound to inquire whether the proposed security was within the trusts of the will. The decision of the Vice-Chancellor would be reversed, the costs below to be paid by the plaintiffs, but without costs of the appeal.

### Lords Justices.

*Smith v. Tuck*. July 29, 1852.

HABEAS CORPUS.—DISOBEDIENCE TO ORDER BY CONSENT.—DISCHARGE.

*Upon the return to a writ of habeas corpus to bring up a prisoner to be discharged, it appeared that the imprisonment was for disobedience to an order made by consent: a motion for his discharge was refused.*

*Malins* appeared in support of this motion for the discharge of a prisoner brought up on *habeas corpus*. It appeared, however, that the order for disobedience to which the prisoner was in custody was made by consent by the Lords Commissioners of the Great Seal.

*Greene* contra.

The Lords Justices refused the motion.

### Kills Court.

*In re Monmouthshire and Glamorganshire Banking Company, ex parte Capes*. July 29, 1852.

WINDING-UP ACT.—EXECUTOR.—CONTRIBUTORY.—RESTRICTION OF LIABILITY.

*By the deed of settlement of a banking company, a purchaser of shares was to be considered, as to all claims, demands, and obligations, a proprietor from the time of the shares being so purchased by or vested in him, but as to all profits not until he had executed the deed, and it was provided that the transfer should carry with it the profits and share of the capital, and reserve fund in respect of such shares, and that upon the perfecting of the transfer the responsibility of the previous owner should cease: Held, confirming the decision of the Master, that an executor who had accepted a transfer of shares held by his testator was liable to the obligations of the company antecedent as well as subsequent to such transfer.*

This was a motion, on appeal from the Master, to remove the name of Mr. John Ebenezer Davies from the list of contributories to the above company, as executor of the late Mr. John Capes, in respect of 105 shares, and for the discharge of an order for a call. By clause 57 of the company's deed of settlement, it was provided that every person who has purchased any shares shall take a transfer or assignment of such shares, and shall, as to all debts, obligations, claims, and demands, be considered as proprietor of the company from the time of the shares being so purchased by, or

being so conveyed to him, and liable to all claims therefrom, but that as to all profits he is not to be a proprietor till he has executed the deed; and by clause 60, that whenever any shares shall be actually perfected or transferred to a new proprietor, then, and in every such case, the responsibility of the previous owner in respect of such shares shall cease and determine, and such previous owner shall be exonerated and discharged from all claims and obligations in respect of such shares. The appellant had accepted a transfer, and the Master held he was liable to the antecedent as well as to the subsequent liabilities of the company.

R. Palmer and Lewis in support, on the ground the appellant was only liable to the claims accruing after the date of the transfer.

Lloyd and James for the official manager, *contrâ*.

The Master, of the Rolls, after referring to ss. 57 and 60, and to s. 54, which provided that every transfer of shares should carry with it the profits and share of the capital and reserved fund, so as to close all the right and interest of the party making such transfer, said, that the Master's decision was right, and the motion was refused, without costs.

#### Vice-Chancellor Turner.

*In re Powell's Trust.* May 7; June 25, 1852.

TRUSTEES' RELIEF ACT.—ANNUITY.—PAYMENT OF INTEREST ON ARREARS.

Held, that an annuitant whose annuity was secured on a reversionary interest, was not entitled to be paid interest on the arrears thereof out of the fund which had been paid into Court under the 10 & 11 Vict. c. 96.

THIS was a petition for the payment out of Court of a sum of money, paid in under the 10 & 11 Vict. c. 96, to the respective parties entitled thereto. It was asked on behalf of an annuitant, whose annuity was secured on a reversionary interest, that the arrears should be paid with interest. *Cur. ad. vult.*

The Vice-Chancellor said, that wherever interest had been allowed there were special circumstances involved, and that in the present case interest could not be recovered.

#### Vice-Chancellor Kindersley.

*Mackenzie v. Mackenzie.* July 17, 1852.

BANKRUPT.—ASSIGNEES.—NOTICE TO TRUSTEES OF SETTLEMENT.—ASSIGNEES IN INSOLVENCY.—PRIORITY.

M. was insolvent in 1828, and bankrupt in 1835, but the assignees in bankruptcy gave it appeared prior notice thereof to the trustees under his marriage settlement upon his presenting a petition for payment out to himself of the fund which had been paid into Court: Held, that the assignees in bankruptcy were entitled in priority to those in insolvency.

Bacon and Osborne appeared in support of this petition, which was presented on behalf of the assignees in bankruptcy of Mr. Mackenzie,

claiming to be entitled to a fund in Court over which the bankrupt had an absolute power of appointment, in priority to the assignees in insolvency. It appeared that he was insolvent in 1828, and bankrupt in 1835, and that on presenting a petition in reference to his right to the fund as against the present petitioners, the trustees were served with notice of the bankruptcy.

Stuart and Follett, for the assignees in insolvency, *contrâ*.

The Vice-Chancellor said, that as the assignees in bankruptcy were the first to give notice to the trustees, they were entitled to priority over those in insolvency, and the notice to the trustees of the fund in Court was sufficient, although a stop-order would have been the safer mode.

#### Vice-Chancellor Parker.

*Alcock v. Alcock.* July 19, 22, 1852.

WIFE SUING HUSBAND BY NEXT FRIEND.—DEPOSITIONS.—EVIDENCE.

Held, that the depositions of a married woman suing her husband by her next friend cannot be received in support of her own case against her husband.

THE plaintiff in this case was a married woman, and sued by her next friend her husband for an account of certain property which had come to his hands under a settlement.

Russell and Cole tendered in support of the plaintiff's case her own depositions; Bacon, Anderson, and G. W. Collins, *contrâ*.

*Cur. ad. vult.*

The Vice-Chancellor said, before the recent Acts 6 & 7 Vict. c. 87, and 14 & 15 Vict. c. 99, there would have been two objections to the admissibility of the evidence, that she was a party to the suit, and that as a *femme covert* her evidence could not be received as against her husband. Although the 6 & 7 Vict. c. 87, provided that she should no longer be excluded by reason of any incapacity arising from interest, yet it was also provided that the Act should not render competent any party named on the record, nor the husband or wife of any such party. Then the 2nd section of the 14 & 15 Vict. c. 99, repealed so much of the former Act as declared the persons who were parties to suits should not be rendered competent, but it was silent as to the evidence of the husband or wife of any such person. The construction to be put on the last Act was, that it only removed the objection to the evidence arising from the witness being a party, but it left every objection which might have previously existed independently thereof. Thus, a solicitor who was suing his client could not be examined as a witness against him in respect of matters which were to be protected as confidential communications, although the objection of his being a party was removed. There was therefore nothing in these Statutes to remove the incapacity of a wife as a witness against her husband, and the depositions must accordingly be rejected.

**Court of Queen's Bench.**

*Mackenzie v. Sligo and Shannon Railway Company.* June 1, 18, 1852.

WINDING-UP ACT.—ACTION AGAINST RAILWAY COMPANY.—PLEA OF DISSOLUTION AND OMISSION TO OBTAIN LEAVE OF MASTER.—DEMURRER.

Held, that the dissolution of a railway company under the 11 & 12 Vict. c. 45, does not constitute a bar to a plaintiff recovering in an action on an award against the company, nor does the omission by the plaintiff to prove the amount of his claim before the Master. But *semble*, the defendants may stay the action under s. 73 of the act by Judge's order.

THIS was an action to recover the sum of

3,310*l.* under an award, to which the defendants pleaded that the company was dissolved under the 11 & 12 Vict. c. 45, and that the plaintiff had omitted to prove the amount of his claim before the Master and had not obtained leave to proceed at law.

*Raymond* appeared in support of a demurrer to these pleas; *Wordsworth* contra.

*Cur. ad. vult.*

The Court said, that the pleas were insufficient, as there was no statutory provision taking away the Common Law remedy for the debt on the dissolution of the company, but on the contrary s. 58 expressly declared that the statute was not to take away any legal remedy, and the defendants' remedy was to stay the action under s. 73 by applying to a Judge.

**ANALYTICAL DIGEST OF CASES,**

REPORTED IN ALL THE COURTS.

**Courts of Equity.**

[For the previous Sections of the Digest in this Volume, see

*Privy Council*: Appeals, p. 17.

*House of Lords*: Appeals, p. 38.

*Courts of Equity*:

Law of Attorneys and Solicitors, p. 125.

Contributories under the Winding-up Act, p. 143.

Law of Trustees, p. 165.

Lunacy, p. 185.

Law relating to Infants, p. 186.

Law relating to Charities, p. 203.

Appeals in Bankruptcy, p. 225.

Construction of Statutes, pp. 104, 286, 306, 325.

Law of Wills, 346.]

**LAW OF WILLS.**

**ABATEMENT.**

1. *Payment out of corpus.*—*Priority.*—A testator, by his will, bequeathed the residue of his real and personal estate to his widow and three other persons as trustees, on trust to sell and invest in Government securities, and out of the dividends to pay an annuity of 500*l.* to his daughter for life, an annuity of 100*l.* to W. C. for life, and on his death an annuity of 50*l.* to the son of W. C. for life, and the remainder of the dividends to the testator's widow for her life: the testator directed that, after the death of the widow, if the daughter should be then living and should have no child then living, the trustees should pay her a further annuity of 500*l.*, that if the testator's daughter should have a child living at the death of the widow the two annuities of 500*l.* should cease, and the trustees raise and invest 20,000*l.* and pay the dividends to the daughter for her life with remainder to her children; that the trustees should also pay 5,000*l.* to such person or persons as the widow should by will appoint, and that the widow should

also have power to dispose of 1,000*l.*, either by gift in her lifetime or by will, among her three co-trustees in such proportions as she should think fit; and the testator named certain persons as residuary legatees. There being a deficiency of assets to pay the two annuities of 500*l.*, and also the legacies of 5,000*l.* and 1,000*l.*: Held, that the annuities were not entitled to priority over the legacies, the terms of the will affording no proof that the testator intended there should be such priority: Held, also, that the annuities were not payable out of the corpus of the testator's estate.

The cases of *Lewin v. Lewin*, 2 Ves. 415, and *Blower v. Morret*, 2 Ves. 420, observed upon. *Miller v. Huddleston*, 3 M'N. & G. 513.

Cases cited in the judgment: *Beeston v. Booth*, 4 Madd. 161; *Crowder v. Clowes*, 2 Ves. J. 449.

2. *Legacies.*—A. bequeathed property amounting to 1,279*l.* to B. Subsequently B., after referring to the will of A., and that he was desirous of making the following legacies to A.'s relations, bequeathed to them legacies amounting to 2,800*l.*; and proceeded, —but if the property "I became entitled to under the will of A. should fall short and be deficient in paying such legacies, my desire is, that 500*l.* out of any other part of my personal estate shall be paid and applied for that purpose." Held, that the legacies, though nominally amounting to 2,800*l.*, were limited to 1,279*l.* plus 500*l.*, and that they must therefore abate. *Read v. Strangways*, 14 Beav. 139.

**ANNUITIES.**

1. *For life.—Perpetual.*—A testator, by his will gave an annuity in the following terms:—"I give, devise, and bequeath unto my son, E. C. Yates, one clear annuity of 100*l.* per annum, for and during his natural life, and should he die, a child him surviving, I continue the same annuity for such child's use and benefit, to be paid to his or her mother;" and after making

other bequests of legacies and annuities, he devised and bequeathed the residue of his estate real and personal or mixed on trust to keep up his plantations in the West Indies, in the next place to pay, satisfy, and discharge the several legacies and annuities before given, and to apply the residue for the benefit of his wife and his other children: *Held*, that the daughter of E. C. Yates was, on the death of her father, entitled, not to a perpetual annuity, but to an annuity during her life only.

*Held*, also, that the direction to pay the annuity to the mother did not show that the annuity was to be confined to the minority of the child of E. C. Yates. *Yates v. Maddan*, 3 M'N. & G. 532.

Cases cited in the judgment: *Stokes v. Heron*, 12 Cl. & Fin. 161; *Robinson v. Hunt*, 4 Beav. 450; *Hedgas v. Harpur*, 9 Beav. 479; *Innes v. Mitchell*, 6 Ves. 464; 9 Ves. 212; *Savery v. Dyer*, 1 Amb. 140; *Dick*, 162.

2. *When given by will for life only.*—The general rule is, that where an annuity is given to a person by will (the will also creating the annuity), the annuitant takes it for life only.

The decision of Lord Cottenham in *Blewitt v. Roberts* (Cr. & P. 274), doubted. *Yates v. Maddan*, 3 M'N. & G. 532.

#### CONDITION.

1. *Cannot be annexed to absolute gift.*—Where a money fund is given to a person absolutely, a condition cannot be annexed to the gift that so much as he shall not dispose of shall go over to another person. *Watkins v. Williams*, 3 M'N. & G. 622; *Haverd v. Church*, *ib.*

Cases cited in the judgment: *Ross v. Ross*, 1 J. & W. 154; *Bourn v. Gibbs*, 1 Russ. & M. 614; *Cuthbert v. Purrier*, Jacob, 415; *Green v. Harvey*, 1 Hare, 431; *Byng v. Lord Strarford*, 5 Beav. 567; *Doe dem. Stevenson v. Glover*, 1 C. B. 448; *Doe dem. Martin*, 4 T. R. 39.

2. *Against marriage.*—*Validity.*—*Keeping tomb in repair.*—A testator, by his will, directed that his residuary personal and real estate should be sold, and the proceeds vested in some Government annuity for the benefit of his wife, L. Lloyd, and of A., for their joint lives, and at the death of either of them her share to go to the survivor; "and in case either L. Lloyd or A. should marry or to live in a state of adultery, then her share shall pass to the other, the same as if death had taken place; and should L. Lloyd and A. both marry, then their shares and interest shall pass to my nephew H. in case L. Lloyd and A. fails in fulfilling the conditions of this my will." And he directed L. Lloyd and A., out of the annuities they received, to keep in good and sound repair a certain tomb and vault belonging to him, and to paint it, "and in default or failure they shall lose and forfeit their claims to the annuities, and any person hereafter that shall receive the annuities shall be bound to perform the same conditions."

*Held*, that, as between L. Lloyd, the widow,

and A., the gift over to A. upon L. Lloyd marrying was good; but the condition against A. marrying was void; that the gift over in the case of both marrying was void; and that the condition annexed to the gift of the annuities to L. Lloyd and A. to keep his tomb in repair was good. *Lloyd v. Lloyd*, 2 Sim. N. S. 255.

#### CONSTRUCTION.

1. *Absolute interest.*—A testator bequeathed his residuary personal estate (after a life interest), to his grandson to and for his own use; but, if he should die under 21, without leaving lawful issue, or if he should attain 21 and die without leaving issue, and without having disposed of the same by his will, or otherwise, then over: *Held*, upon the construction of the whole will, that in the event (which happened), of the grandson attaining 21, he took an absolute interest. *In re Yalden*, *in re Baker's Trusts*, 1 De G. M'N. & G. 53.

Cases cited: *Ross v. Ross*, 1 J. & W. 154; *Attorney-General v. Hall*, *ib.* 158, n.; *Robinson v. Dugate*, 2 Vern. 181; *Cuthbert v. Purrier*, Jacob, 415; *Grey v. Montague*, 2 Eden, 205; 6 Bro. P. C. 429.

2. *Gift of whatever remains not too indefinite.*—A testator directed his debts and funeral expenses to be paid, and gave to his wife all his estate, effects, goods, chattels, houses, lands, moneys, securities for money, due or growing due, every matter and thing whatsoever, and wheresoever the same might be at the time of his decease, for her sole separate use and benefit; and he further directed, that, at her decease, whatever remained of his estate and effects should go to and be equally divided, share and share alike, among certain specified persons, or such of them as should then be living: *Held*, that there was a substantial gift after the widow's death. *Constable v. Bull*, 3 De G. & S. 411.

3. *Husbands of my said daughters.*—*Nominatim.*—Testatrix gave legacies to her son, John Bryan; and to her daughters, Ann, the wife of James Winson; Harriet, the wife of William Darnborough; and Mary, the wife of William Dudley; and she gave her stock in the bank to her said daughter Mary Dudley, for life, and after her death, to be equally divided between the husbands of her said daughters and her son, or such of them as might be living at Mary Dudley's decease. All the husbands named in the will survived the testatrix; but William Darnborough was the only one of them who survived Mary Dudley. Ann Winson, however, married a second time, and her second husband was living at Mary Dudley's death, and he claimed a share of the stock. But the Court held, that by the words "the husbands of my said daughters," the testatrix meant their husbands whom she had named; and, therefore, that William Darnborough was exclusively entitled to the stock. *In re Bryan's Trust, Ex parte Darnborough*, 2 Sim. N. S. 103.

[To be continued.]

# The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

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SATURDAY, SEPTEMBER 11, 1852.
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## COUNTY COURTS PROCEEDINGS ACT.

### SCALE OF COSTS AND REGISTER OF JUDGMENTS.

THE Act of last Session (15 & 16 Vict. c. 54),<sup>1</sup> which appears amongst the Statutes under the erroneous title of the "County Courts Further Extension" Act; but which the preamble, with more show of correctness, describes as an Act "further to facilitate and arrange proceedings in the County Courts," has been heretofore commented upon chiefly with reference to the section which interferes with the rights of attorneys to appear in those Courts by their agents,—a provision, as our readers will remember, hastily and unfairly introduced at the last stage.<sup>3</sup>

The Act contains several other provisions not unworthy of consideration, to some of which it is now proposed to direct attention. In the first place, it is intended that five of the County Court Judges shall "frame a scale of costs and charges to be allowed as between attorney and client and as between party and party," which, upon being approved of by three or more of the Judges of the Superior Courts, is to be in force in every County Court, and to govern the taxation of all costs. It is also expressly provided, that in no case upon the taxation of costs between attorney and client, shall any charges be allowed not sanctioned by the scale, unless the clerk of the Court (who is the taxing officer) is satisfied *by writing under the hand of the client* that he has agreed to pay such further charges. It is also provided, that "no attorney shall have a right to recover at law from his client

any costs or charges not allowed on taxation."

By this provision an additional, and as it seems to us, an unnecessary and embarrassing restriction is imposed upon an attorney, who cannot safely take directions from his client upon any matter occurring in the conduct of a suit and involving the smallest expense, not provided for in the ordinary scale of costs, without having such directions under the hand of the client.

A greater grievance, however, and one we have some reason to believe, severely felt by the suitors of the County Courts, is the unlimited discretion vested in the Judges, of granting or withholding costs, and the capricious manner in which this discretion is exercised. Assuming it to be expedient that the scale of costs should be framed upon the lowest standard and in the most niggardly spirit, we are at a loss to conceive why in the County Courts, any more than in the Superior Courts, the successful party should not be entitled to his costs? In the County Courts, however, all the costs are paid by or apportioned between the parties, "as the Judge shall think fit."<sup>3</sup> If the plaintiff be nonsuit or judgment given for the defendant, the Judge may award to the defendant by way of costs, such sum as *in his discretion* he shall think fit;<sup>4</sup> and in every case "the expense of employing a barrister or an attorney by either plaintiff or defendant shall not be allowed on taxation of costs, unless by order of the Judge."<sup>5</sup>

Those who imagine that the allowance of costs may be safely left to the individual discretion of the sixty gentlemen who preside as Judges of the County Courts should

<sup>1</sup> Printed without abridgment, *ante*, p. 194.

<sup>2</sup> See observations on this clause, *ante*, p. 171.

<sup>3</sup> 9 & 10 Vict. c. 95, s. 88.

<sup>4</sup> 9 & 10 Vict. c. 95, s. 79.

<sup>5</sup> 9 & 10 Vict. c. 95, s. 91, and 13 & 14 Vict. c. 61, s. 6.



inquire how the system works in those tribunals. Lord Eldon was wont to say that "unlimited discretion is unknown to the law;" but the rules upon which County Court Judges determine, whether professional costs should be refused or allowed, prove that discretion may be so extensive as to render it impossible to define its limits. The laxity of practice which prevails on this subject, and the hardship to which individual suitors are subjected by eccentric decisions, afford an additional illustration of the danger which arises from permitting Judges—even if they were the most able and experienced—to improvise the law and usurp the functions of the Legislature.

The County Court Extension Act, 13 & 14 Vict. c. 61, s. 13, provided, that a plaintiff bringing an action in the Superior Courts and recovering less than 20*l.* in actions of contract, or 5*l.* in actions of tort, may recover his costs if he could satisfy the Court in which the action was brought, or a Judge, that the action was brought for a cause in which concurrent jurisdiction is given to the Superior Courts, or where no plaint could have been entered in the County Court, or where the cause was removed by certiorari from the County Court. It was found in practice, that in other cases besides those enumerated, a plaintiff not entitled to recover more than 20*l.*, ought not to be compelled to sue in the County Courts, and therefore by the 4th section of the Act now under consideration, the 13th section of the 13 & 14 Vict. c. 61, is repealed, and, in addition to the three classes of cases enumerated in that section, power is given to the Court, or a Judge at Chambers, if satisfied that *there was sufficient reason for bringing his action* in the Superior Courts, to order that the plaintiff should recover his costs. So far the law may be said to be improved and injustice prevented, but, as repeatedly suggested, the real remedy is to give the plaintiff in all cases the option to sue in the Superior Court or in the County Court, reducing the expense of suing in the former to the smallest practicable amount.

The only remaining provision of a novel character in the late Act, in which the general public can be said to be interested, is that (to be found at section 18) authorising the establishment of a *registry of judgments* for 10*l.* and upwards entered in the County Courts. The utility of a register of County Court Judgments must necessarily depend, in a considerable degree, upon the regulations made for carrying this

part of the Act into effect, and which are left altogether to the Commissioners of her Majesty's Treasury. Not only is the place where judgments are to be registered, the regulations under which inspection is to be allowed, the fees to be taken for inspection, and the application of those fees, left to the Treasury, but the mode in which the entry is to be made is also left to the discretion of the Treasury, without any provision indicating whose duty it is to cause the entry to be made, or what consequences are to follow from omitting to make such entry, or making it imperfectly or incorrectly. The Legislature has thought fit to declare its intentions on this subject, only by enacting, that a registry shall be formed "in such manner, in such place, and under such regulations," as the Commissioners of the Treasury shall appoint. As *carte blanche* is thus given to her Majesty's Commissioners, it is to be hoped *they* will consult competent persons, possessing practical knowledge of the working of the numerous Acts now in force requiring the registration of judgments, before they adopt a scheme by which additional expense would be thrown on clients and increased responsibility on their solicitors, without any corresponding benefit to the public.

## NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

### COMMON LAW PROCEDURE.

#### 15 & 16 VICT. c. 76.

Commencement of Act; s. 1.

*Writs for commencement of actions.*

Personal actions when defendant resides within the jurisdiction, to be commenced by writ of summons in Form No. 1 of Schedule (A); s. 2.

No form or cause of action to be mentioned in writ; s. 3.

Writ to state names of all defendants, and for only one action; s. 4.

Writ to be dated of day of issuing, and tested in name of chief or senior Judge; s. 5.

Writ to be indorsed with name and abode of attorney, or a memorandum that writ has been sued by plaintiff in person; s. 6.

Attorney, on demand, to declare whether writ issued by his authority, and to declare name and abode of his client, if ordered. If writ issued without authority of attorney, proceedings to be stayed; s. 7.

Indorsement of debt and costs on writ and copy of writ for a debt, with notice

that proceedings will be stayed on payment within four days ; s. 8.

Concurrent writs may be issued ; s. 9.

From commencement of this Act certain provisions of 2 Wm. 4, c. 39, repealed ; s. 10.

Renewal of writs of summons to save the Statute of Limitation, and for other purposes ; s. 11.

Renewal of writs issued before this Act ; s. 12.

Production of renewed writ evidence of commencement of action ; s. 13.

Writ may be served in any county ; s. 14.

Indorsement of service to be made ; s. 15.

As to service of writ on corporation and inhabitants of hundreds and towns ; s. 16.

Proceedings where personal service cannot be effected, but defendant knows of the writ, and evades service ; s. 17.

As to actions against British subjects residing out of the jurisdiction of Superior Courts ; s. 18.

As to actions against foreigners residing out of the jurisdiction of Superior Courts ; s. 19.

Omission to insert or indorse matters in or on writ not to nullify it ; s. 20.

Substitution by mistake or inadvertence of one form of writ for another may be by Judge without costs ; s. 21.

Writs for service within and without jurisdiction may be concurrent, and *vice versa* ; s. 22.

Affidavits in certain cases may be sworn before a consul ; s. 23.

Distringas to compel appearance or to proceed to outlawry abolished ; s. 24.

Special indorsement of the particulars of debts or liquidated demands may be made on the writ. Special indorsement to stand for particulars of demand ; s. 25.

*Appearance, and proceedings in default of appearance.*

Appearance according to provisions of Acts of 12 Geo. 1, c. 29, and 2 Wm. 4, c. 39, abolished ; s. 26.

Final judgment upon writs specially indorsed in default of appearance ; s. 27.

Judgment for non-appearance where the writ is not indorsed in the special form ; s. 28.

Appearance to be entered at any time before judgment ; s. 29.

Appearance by the defendant in person to give an address at which proceedings may be served ; s. 30.

Mode of appearance to writ of summons ; s. 31.

Proceedings mentioned in writ or notice may be had and taken ; s. 32.

Proceedings where only some of the defendants appear to a writ specially endorsed ; s. 33.

*Joinder of parties.*

Non-joinder and mis-joinder of plaintiffs may be amended before trial ; s. 34.

Non-joinder and mis-joinder of plaintiffs may be amended at the trial, as in cases of amendments of variances under 3 & 4 Wm. 4, c. 42 ; s. 35.

Upon notice or plea of non-joinder of plaintiffs, proceedings may be amended ; s. 36.

Mis-joinder of defendants may be amended before or at trial ; s. 37.

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The following are the sections of the Act:—

An Act to amend the Process, Practice, and Mode of Pleading in the Superior Courts of Common Law at Westminster, and in the Superior Courts of the Counties Palatine of Lancaster and Durham. [30th June, 1852.]

Whereas the Process, Practice, and Mode of Pleading in the Superior Courts of Common Law at Westminster may be rendered more simple and speedy: Be it enacted as follows:

1. The provisions of this Act shall come into operation on the 24th day of October, 1852.

#### WRITS FOR COMMENCEMENT OF ACTIONS.

And with respect to the writs for the commencement of personal actions in the said Courts against defendants, whether in or out of the jurisdiction of the Courts, be it enacted as follows:

2. All personal actions brought in her Majesty's Superior Courts of Common Law, where the defendant is residing or supposed to reside within the jurisdiction of the said Courts, shall be commenced by writ of summons in the form contained in the Schedule (A.) to this Act annexed, marked No. 1, and in every such writ and copy thereof the place and county of the residence or supposed residence of the party defendant, or wherein the defendant shall be or shall be supposed to be, shall be mentioned;

and such writ shall be issued by any one of the officers of the said Courts respectively by whom like process hath been heretofore issued from such Court, or by such other officer as the Court shall direct.

3. It shall not be necessary to mention any form or cause of action in any writ of summons, or in any notice of writ of summons, issued under the authority of this Act.

4. Every writ of summons shall contain the names of all the defendants, and shall not contain the name or names of any defendant or defendants in more actions than one.

5. Every writ of summons shall bear date on the day on which the same shall be issued, and shall be tested in the name of the Lord Chief Justice or Lord Chief Baron of the Court from which the same shall issue, or in case of a vacancy of such office, then in the name of a senior Puisne Judge of the said Court.

6. Every writ of summons shall be indorsed with the name and place of abode of the attorney actually suing out the same, and in case such attorney shall not be an attorney of the Court in which the same is sued out, then also with the name and place of abode of the attorney of such Court in whose name such writ shall be taken out; and when the attorney actually suing out any writ shall sue out the same as agent for an attorney in the country, the name and place of abode of such attorney in the country shall also be indorsed upon the said writ; and in case no attorney shall be employed to issue the writ, then it shall be indorsed with a memorandum expressing that the same has been sued out by the plaintiff in person, mentioning the city, town, or parish, and also the name of the hamlet, street, and number of the house of such plaintiff's residence, if any such there be.

7. Every attorney whose name shall be indorsed on any writ issued by authority of this Act, shall, on demand in writing, made by or on behalf of any defendant, declare forthwith whether such writ has been issued by him or with his authority or privity; and if he shall answer in the affirmative, then he shall also, in case the Court or a Judge shall so order and direct, declare in writing, within a time to be allowed by such Court or Judge, the profession, occupation, or quality, and place of abode of the plaintiff, on pain of being guilty of a contempt of the Court from which such writ shall appear to have been issued; and if such attorney shall declare that the writ was not issued by him, or with his authority or privity, all proceedings upon the same shall be stayed, and no further proceedings shall be taken thereupon without leave of the Court or a Judge.

8. Upon the writ and copy of any writ served for the payment of any debt the amount of the debt shall be stated, and the amount of what the plaintiff's attorney claims for the costs of such writ, copy, and service, and attendance to receive debt and costs, and it shall be further stated that upon payment thereof within four days to the plaintiff or his attorney, further

proceedings will be stayed; which indorsement shall be written or printed in the following form or to the like effect:

"The plaintiff claims £                      for debt,  
"and £                      for costs, and if the amount  
"thereof be paid to the plaintiff or to his  
"attorney within four days from the service  
"hereof further proceedings will be stayed."

But the defendant shall be at liberty, notwithstanding such payment to have the costs taxed, and if more than one-sixth shall be disallowed, the plaintiff's attorney shall pay the costs of taxation.

9. The plaintiff in any such action may, at any time during six months from the issuing of the original writ of summons, issue one or more concurrent writ or writs, each concurrent writ to bear date of the same day as the original writ, and to be marked with a seal bearing the word "concurrent," and the date of issuing the concurrent writ; and such seal shall be provided and kept for that purpose at the offices of the masters of the said courts, and shall be impressed upon the writ by the proper officer of the Court out of which the original writ issued: provided always, that such concurrent writ or writs shall only be in force for the period during which the original writ in such action shall be in force.

10. From the time when this Act shall commence and take effect, so much of a certain Act of Parliament passed in the 2 Wm. 4, c. 39, intituled "An Act for Uniformity of Process in Personal Actions in His Majesty's Courts of Law at Westminster," as relates to the duration of writs, and to alias and pluries writs, and to the proceedings necessary for making the first writ in any action available to prevent the operation of any statute whereby the time for the commencement of any action may be limited, shall be repealed, except so far as may be necessary for supporting any writs that have been issued before the commencement of this Act, and any proceedings taken or to be taken thereon.

11. No original writ of summons shall be in force for more than six months from the day of the date thereof, including the day of such date; but if any defendant therein named may not have been served therewith, the original or concurrent writ of summons may be renewed at any time before its expiration, for six months from the date of such renewal, and so from time to time during the currency of the renewed writ, by being marked with a seal, bearing the date of the day, month, and year of such renewal, such seal to be provided and kept for that purpose at the offices of the masters of the said Superior Courts, and to be impressed upon the writ by the proper officer of the Court out of which such writ issued, upon delivery to him by the plaintiff or his attorney of a præcipe in such form as has heretofore been required to be delivered upon the obtaining of an alias writ; and a writ of summons so renewed shall remain in force and be available to prevent the operation of any statute whereby the time for the commencement of the action may be

limited, and for all other purposes, from the date of the issuing of the original writ of summons.

12. Where any writ of summons in any such action shall have been issued before, and shall be in force at the commencement of this Act, such writ may at any time before the expiration thereof be renewed under the provisions of and in the manner directed by this Act; and where any writ, issued in continuation of a preceding writ according to the provisions of the said Act of his late majesty King Wm. 4th, shall be in force and unexpired, or where one month next after the expiration thereof shall not have elapsed at the commencement of this Act, such continuing writ may, without being returned *non est inventus*, or entered of record according to the provisions of the said Act of his late Majesty King Wm. the 4th, be filed in the office of the Court within one month next after the expiration of such writ, or within twenty days after the commencement of this Act; and the original writ of summons in such action may thereupon, but within the same period of one month next after the expiration of the continuing writ, or within twenty days after the commencement of this Act, be renewed under the provisions of and in the manner directed by this Act; and every such writ shall after such renewal have the same duration and effect for all purposes, and shall, if necessary, be subsequently renewed, in the same manner as if it had originally issued under the authority of this Act.

13. The production of a writ of summons purporting to be marked with the seal of the Court, showing the same to have been renewed according to this Act, shall be sufficient evidence of its having been so renewed, and of the commencement of the action as of the first date of such renewed writ for all purposes.

14. The writ of summons in any action may be served in any county.

15. The person serving the writ of summons shall and he is hereby required, within three days at least after such service, to indorse on the writ the day of the month and week of the service thereof, otherwise the plaintiff shall not be at liberty, in case of non-appearance, to proceed under this Act; and every affidavit of service of such writ shall mention the day on which such indorsement was made.

16. Every such writ of summons issued against a corporation aggregate may be served on the mayor or other head officer, or on the town clerk, clerk, treasurer, or secretary of such corporation; and every such writ issued against the inhabitants of a hundred or other like district may be served on the high constable thereof, or any one of the high constables thereof; and every such writ issued against the inhabitants of any county of any city or town, or the inhabitants of any franchise, liberty, city, town, or place not being part of a hundred or other like district, on some peace officer thereof.

17. The service of the writ of summons, wherever it may be practicable, shall, as hereto-

fore be personal; but it shall be lawful for the plaintiff to apply from time to time, on affidavit, to the Court out of which the writ of summons issued, or to a Judge; and in case it shall appear to such Court or Judge that reasonable efforts have been made to effect personal service, and either that the writ has come to the knowledge of the defendant, or that he wilfully evades service of the same, and has not appeared thereto, it shall be lawful for such Court or Judge to order that the plaintiff be at liberty to proceed as if personal service had been effected, subject to such conditions as to the Court or Judge may seem fit.

18. In case any defendant, being a British subject, is residing out of the jurisdiction of the said Superior Courts, in any place except in Scotland or Ireland, it shall be lawful for the plaintiff to issue a writ of summons in the form contained in the Schedule (A.) to this Act annexed, marked No. 2, which writ shall bear the indorsement contained in the said form, purporting that such writ is for service out of the jurisdiction of the said Superior Courts; and the time for appearance by the defendant to such writs shall be regulated by the distance from England of the place where the defendant is residing; and it shall be lawful for the Court or Judge, upon being satisfied by affidavit that there is a cause of action, which arose within the jurisdiction, or in respect of the breach of a contract made within the jurisdiction, and that the writ was personally served upon the defendant, or that reasonable efforts were made to effect personal service thereof upon the defendant, and that it came to his knowledge, and either that the defendant wilfully neglects to appear to such writ, or that he is living out of the jurisdiction of the said Courts, in order to defeat and delay his creditors, to direct from time to time that the plaintiff shall be at liberty to proceed in the action in such manner and subject to such conditions as to such Court or Judge may seem fit, having regard to the time allowed for the defendant to appear being reasonable, and to the other circumstances of the case: Provided always, that the plaintiff shall and he is hereby required to prove the amount of the debt or damages claimed by him in such action, either before a jury upon a writ of inquiry, or before one of the Masters of the said Superior Courts in the manner hereinafter provided, according to the nature of the case, as such Court or Judge may direct; and the making such proof shall be a condition precedent to his obtaining judgment.

19. In any action against a person residing out of the jurisdiction of the said Courts, and not being a British subject, the like proceedings may be taken as against a British subject resident out of the jurisdiction, save, that in lieu of the form of writ of summons in the Schedule (A.) to this Act annexed marked No. 2, the plaintiff shall issue a writ of summons according to the form contained in the said Schedule (A.) marked No. 3, and shall in manner aforesaid serve a notice of such last-mentioned writ upon the defendant therein mentioned, which

notice shall be in the form contained in the said Schedule also marked No. 3; and such service shall be of the same force and effect as the service of the writ of summons in any action against a British subject resident abroad, and by leave of the Court or a Judge, upon their or his being satisfied by affidavit as aforesaid, the like proceedings may be had and taken thereupon.

20. If the plaintiff or his attorney shall omit to insert in or indorse on any writ or copy thereof any of the matters required by this Act to be inserted therein or indorsed thereon, such writ or copy thereof shall not on that account be held void, but it may be set aside as irregular, or amended, upon application to be made to the Court out of which the same shall issue, or to a Judge; and such amendment may be made, upon any application to set aside the writ, upon such terms as to the Court or Judge may seem fit.

21. If either of the forms of writ of summons contained in the Schedule (A.) to this Act annexed, and marked respectively Nos. 1, 2, and 3, shall by mistake or inadvertence be substituted for any other of them, such mistake or inadvertence shall not be an objection to the writ or any other proceeding in such action, but the writ may, upon an *ex parte* application to a judge, whether before or after any application to set aside such writ or any proceeding thereon, and whether the same or notice thereof shall have been served or not, be amended by such judge without costs.

22. A writ for service within the jurisdiction may be issued and marked as a concurrent writ with one for service out of the jurisdiction; and a writ for service out of the jurisdiction may be issued and marked as a concurrent writ with one for service within the jurisdiction.

[To be continued.]

## NOTICES OF NEW BOOKS.

*The New Practice of the Court of Chancery, as regulated by the Acts for the Improvement of the Jurisdiction of Equity; for Abolishing the Office of Master; and for Relief of the Suitors; with Introduction, Notes, the Acts, and a copious Index.* By JAMES O'DOWD, Esq., Barrister-at-Law. London: Butterworths. 1859. Pp. 122.

WITHOUT committing ourselves to the expression of an unqualified acquiescence in all the views, to be found in this little volume, of the recent sweeping legislative changes in the administration of equity, we cordially recommend it to our readers. It is highly creditable to Mr. O'Dowd to be first in the field, and so well equipped: for in the modest and low-priced volume before us, he has taken at once a practical and



popular view of this most important subject, equally valuable to both the great departments of the Profession. Founding himself upon a careful study of the celebrated Chancery Commissioners' Report, Mr. O'Dowd proceeds to illustrate, by its aid, the intentions of the Legislature in carrying that Report into operation, and has done so with much force and clearness. It is really *interesting* to trace, in these pages, the critical progress of the three Acts which they expound: and we applaud the fair-dealing spirit by which the author is uniformly actuated, in speaking of the various eminent individuals and political parties who have lent a cordial helping hand to the passage of these Acts through the Legislature.

Our readers are aware of our own anxiety with reference to the working of these measures, to which we wish heartily well—as must all who are interested in the economic, speedy, enlightened, and safe administration of justice. No right-minded person can do otherwise than regard with respect the deliberate handiwork of the Imperial Legislature; and all practitioners must forthwith address themselves to mastering both the general scheme and minute details of the Acts by which the administration of Equity is henceforth placed upon a new footing. We have ourselves derived much gratification from the perusal of this unpretending volume, which evinces, in no slight degree, a practical acquaintance with the subject.

As a sample of the author's easy and forcible style of composition, we extract the following paragraphs of the "Conclusion" and note:—

"On reviewing the many and important alterations effected in the procedure and practice of the Court of Chancery by the Acts thus given in abstract, may not every genuine friend of the improvement of our legal institutions be solaced by the cheering survey?" Amongst

<sup>1</sup> "Lord Brougham writes in this spirit to Lord Lyndhurst in a letter published in the *Law Review* for May: 'After the bill is passed, and the new system is become the law of the land, there will be time enough to dwell on the share which belongs to each of our fellow-labourers in bringing about a consummation so long and so devoutly wished for. Suffice it for the present to say, that really no party is without great claims on our gratitude, and (a rare felicity!) none seem to deserve any blame; all have acted both honestly and ably; as well my friends of the late Government, who had entirely adopted, and were actively preparing to give effect to, the Report of the Commission, a body above all praise, as your friends and protégés of the present Government, whose

the amendments most likely to attract him will be no doubt the substitution of a concise printed form of bill for the prolix and cumbersome repetitions of the old system of equity pleading; and whilst he commends the new and rational forms in which a plaintiff will be required to state his case to the Court, he will not undervalue a corresponding, and, indeed, consequential, brevity in the style and structure of the defendant's answer. The provision, by which the administration of interrogatories to a defendant shall in future become a proceeding disconnected with the bill as a mere pleading, will, however, in some instances, leave the defendant under the same necessity as before of answering circumstantially and in detail. But whilst the Legislature will be observed to have adopted the most approved method of simplifying and condensing the record, as regards both bill and answer, the power which it has given the Lord Chancellor to reanimate the suspended practice argues no slender distrust in the practical efficacy of those particular amendments. The clause, which prohibits the introduction into any suit of the name of any person as the next friend of any infant, married woman, or other party, without the written authority of such person, will prevent the repetition of such an injustice as occurred in a recent case.

"Passing on, however, from further minor changes to the great features of the new equitable revolution, the reformer of the law will find in the provisions, which are to regulate the whole course of evidence in the Courts of Equity the fulfilment of the most authoritative opinions on that important subject. The existing practice of examining witnesses in private on written interrogatories—of taking evidence in London before an examiner of the Court and in the country before a Commissioner—the mode in which those interrogatories are prepared beforehand—the necessity of producing several witnesses to prove the same facts, from the uncertainty whether one witness (who, if examined orally and in public, would have been found sufficient) has proved the facts necessary to be established—the futility of a cross-examination on written cross-interrogatories, aptly described by the present Lord Chancellor as a 'mere farce'—the tendencies to mislead and deceive, from the circumstance that the depositions, which apparently proceed from the mouth of the witness, proceed in reality from the pen of the draughtsman—the 'drilling and cramming' of witnesses—but, above all, the secrecy and irresponsibility of the present course of examination—have been too forcibly exposed by the Chancery Commissioners to require more than a grateful reference to the remedies, which have been devised for the discovery of truth and the

leader has amply redeemed the pledge he gave me, while the Chancellor has gone farther than he had at first led me to hope. I say nothing for the present of others to whom public gratitude is justly due."

detection of falsehood. These consist partly in an amended system of affidavit evidence, subject to the personal cross-examination of the witness, partly in a method of oral examination borrowed from that in use in the Courts of Common Law in the case of a witness about to go abroad, the Court having power at the hearing to require the production and oral examination before itself of any witness or party in the cause; but the main recommendation of the reformed system will be found in the publicity with which the evidence will be taken, and the opportunities afforded to the parties to direct its application and test its credibility.

"Nor will the valuable amendments which have been introduced for the shortening and rendering more summary the proceedings now instituted for the administration of real and personal estate fail to be appreciated.

"But the most substantive amelioration of the new Chancery code will be found in the series of rules which have been framed to regulate the practice of the Court as to parties. By these the number of parties will be materially diminished, the consequent necessity for employing a corresponding number of solicitors done away with, and a large saving of expense to the suitors effected."

It is observed by Mr. O'Dowd, with reference to the enactment for printing bills, that "it will often happen, especially in remote districts, in which the conveniences of printing may not exist, that the immediate filing of a bill may become a matter of urgency. To provide for certain cases of this kind, sect. 6 empowers the officer of the Court to receive a written copy of the bill or claim upon the undertaking of the solicitor to file a printed bill within 14 days." This is not accurately stated. The cases in which written copies may be received do not depend on the remoteness of the district or the want of the conveniences of printing; but are expressly confined to "bills of complaint praying a writ of injunction, or a writ of *ne exeat regno*, or filed for the purpose either solely or among other things of making an infant a ward of the said Court."

*The Code and Practice of the High Court of Chancery: containing a brief History of the Jurisdiction and Practice of the Court; Chronological Tables of all the Statutes useful in Practice, and of the Orders of Court; the General Orders in Chancery, from 1814 to the present time; and the recent Statutes, 13 & 14 Vict. c. 35; and 15 & 16 Vict. cc. 80, 86, & 87, Abolishing the Office of Master, amending the Practice and Procedure, and for Relief of Suitors in Chancery: with explanatory Notes, and copious Indices to*

*each Volume.* By THOMAS KENNEDY, a Solicitor of the Court. London: Butterworths. 1852.

WE have just had an opportunity of perusing Mr. Kennedy's edition of the Three New Acts for abolishing the office of Master, —amending the practice and procedure,—and for relief of suitors in Chancery. To the Acts are appended explanatory notes which will be found of the greatest value to the practitioner. Mr. Kennedy, as many of our readers know, is peculiarly well qualified to assist his brethren in the ready comprehension of the important changes effected by these Statutes. Since the abolition of the Six Clerks' Office in 1842, he has devoted a large share of attention to the law and practice of the Court, and published a volume comprising all the General Orders of Court, and arranging them, with the decisions thereon, in the shape of a Code of Practice. It was the merit of this work which induced the Council of the Incorporated Law Society to request Mr. Kennedy to assist their Committee in the preparation of their report of December last, on the best means of improving the practice of the Court of Chancery.

Mr. Kennedy, in his preface, thus states the object of his first volume:—

"At that time (the abolition of the Six Clerks' Office) there had not been any complete collection of the General Orders since Mr. Beames's work, which terminated with the year 1814. This induced me to publish in a serviceable and concise form, as a foundation for the code, all the General Orders entered in the Registrar's Book, or affixed in the offices of the Court, since those included in Mr. Beames's book, showing the alterations made in them from time to time, with an index.

"Having completed my collection to the end of the year 1842, I proceeded with the task of classification of all the Orders in Mr. Beames's collection not obsolete or superseded, extracts from all the Statutes affecting the practice then in force, and a digest of every judicial decision upon each Order and Statute. Such of these as had reference to the distinct stages of a suit were placed in the order in which they would arise in it, and the remainder were classified alphabetically under different heads.

"In the year 1845, the arrangement of the materials for the whole book was completed; but as the settling of the details was necessarily a work of time, and the practice in the early stages of a suit is more generally useful, I determined to publish the volume in parts as they were finished. Accordingly, shortly previous to May, 1845, a part, ending with the head of 'Setting down Cause on Bill and Answer,' was printed and published.

"The Orders of May, 1845, which effected very extensive alterations in the practice of the Court, but still left the practitioner in expectation of further changes, put an effectual stop to my labours and rendered it useless to proceed with the codification until there should appear something like finality in the amendments of the practice, if ever that period should arrive. I therefore resolved for a time to abandon the classification, and devoted myself to making the first volume as useful as I could, hoping, however, that the time and labour I had bestowed upon it might not be thrown away, and that it would at all events be of service in the preparation of a code to be promulgated under the authority of the Court, if I did not myself find an opportunity of giving it to the public.

"To complete the first volume, I added to it the Orders of May, 1845, with very full notes, explaining the alterations made by them, and printed a more full and enlarged index, including them, and pointing out the discharged or superseded Orders, by putting the reference to the page in which they were to be found within brackets.

"The next great change took place in the year 1850, by the promulgation of the Orders of 22nd April, 1850, known as the Claim Orders; the Orders of 3rd June, 1850, known as the Masters' Orders; and the Orders of 2nd November, 1850, under the 13 & 14 Vict. c. 35, commonly called Sir G. Turner's Act.

"In order to perfect the work up to that time these Orders, with some Orders in Lunacy and a separate index, were published as a supplement, but will now properly form part of this volume, as being the foundation and inception of the great improvements in the jurisdiction and course of proceeding of the Court effected during this present year."

By this arrangement the first volume, which has a very copious index, will be complete in itself, and will still be found useful; for although many of the Orders have been superseded, yet others still remain in force; moreover the means of readily referring to and comparing even the Orders which are abrogated with those under the new practice will not be without advantage.

Mr. Kennedy then explains the plan of his present volume, which may either be used as a distinct and separate work, or as the second volume of his Code of Practice:—

"I have found it necessary in this volume to deviate from the original plan by including the new Statutes, as they deal so extensively with the details of practice, and the Orders without them would have been comparatively useless. I have also added Sir G. Turner's Act, which would seem to have led to some part of the improvements effected by the new Acts. With regard to these Acts, the plan adopted with the Orders has been followed out

of inserting at the head of each section, dealing with a distinct subject, a principal title in small capitals, and, where necessary, a subordinate title in italics, which titles will alternately designate its place in the code.

"In consequence of all the General Orders to be issued under the new Acts not having been yet promulgated, I have not been able to complete the volume; but as the time, when the Acts and Orders already issued will come into operation is so close at hand, I have thought it advisable not to delay any longer publishing them. I shall, however, as soon as the remaining Orders are issued, print them as a continuation of the part now published, with similar notes and a full index to the whole volume.

"In the meantime, a detailed analysis of the Orders and Acts contained in this part has been given as a temporary substitute for the index; and by continuing it so as to include the future Orders, it will always afford additional facilities for reference."

We shall take an early opportunity of bringing to the notice of our readers some of the principal details of the work. The Notes on the Statutes and the Orders of Court will be found particularly useful. Mr. Kennedy's long experience as a solicitor of the Court, his learning, acuteness, and skill, and his especial study of the subject, render him a safe guide on this important occasion. These notes explain the object intended to be carried out by the alterations, the bearing of the different enactments one upon the other, and on the previously existing practice.

## SECONDARY EVIDENCE OF THE CONTENTS OF A DOCUMENT.

### ATTORNEY.—SUBPENA DUCES TECUM.

WHERE a written document is in the possession of a witness who is not compellable to produce it, and he refuses to do so, secondary evidence of the contents is admissible. And where a person, not party to a suit, attends on a *common subpoena*, and is called as a witness, and refuses to permit the production of a document which his attorney has brought into Court, in obedience to a *subpoena duces tecum*, but which the latter declines to produce; the plaintiff having done everything that could be done to make apparent the impossibility of using the primary means of proof, is entitled to resort to secondary evidence of the contents, and is not precluded from so doing by his omission to serve the client with a *subpoena duces tecum*.

On the trial of an action of *assumpsit* for money had and received, the solicitor who

had been served with a *subpoena duces tecum*, attended with the book which was required in evidence, but declined to produce it, on the ground of privilege, having received it for the purpose of defending his client. The Lord Chief Justice *Wilde* having consulted the other Judges sitting in *Banco*, decided that the attorney was justified in declining to produce the book.

Secondary evidence was then offered but rejected, and the plaintiff was nonsuited. A rule *nisi* was granted for a new trial; and after discussion, the following judgment of the Court was delivered by Mr. Justice *Maule* :—

"In this case, a rule was obtained for a new trial, on the ground of the improper rejection of evidence.

"The action was brought to recover, as money had and received to the plaintiff's use, the deposits paid on an allotment of shares in the Sheffield and Manchester Railway, against the defendant, as one of the directors of the company, on the ground of fraud, and failure of consideration.

"In the course of the plaintiff's case, it was attempted to connect the defendant with the act of inserting an advertisement in a newspaper; and, in order to do so, it was proposed to put in evidence the minute-book of the provisional committee. For that purpose, an attorney named Fry, who had been attorney for the company, and who had been served with a *subpoena duces tecum* as to the book in question, was called as a witness. He said that he had the book with him in Court; but he refused to produce it, because he had received it professionally from the defendant's brother, William Chaplin. The Lord Chief Justice, before whom the cause was tried,—after having consulted the Judges then sitting in *Banco* in the adjoining Court,—decided that the witness was justified in this refusal: whereupon it was proposed, on the part of the plaintiff, to give secondary evidence of the contents of the book, by the examination of the secretary of the company.

"William Chaplin had been subpoenaed by the plaintiff, and had been examined as a witness; and, on being asked, he objected to the book being produced. But, as he had not been served with a *subpoena duces tecum*, it was contended by the counsel for the defendant, that secondary evidence was not admissible; and the Lord Chief Justice, being of that opinion, refused to receive it.

"The plaintiff having been nonsuited, afterwards obtained a rule for a new trial, on the ground that secondary evidence ought to have been admitted.

"The general doctrine is clear, that, if a written document is in the possession of a witness who is not compellable to produce it, and he refuses to do so, secondary evidence of the contents is admissible. But in *Doe dem. Gilbert v. Rose*, 7 M. & W. 102, a point was

suggested by the Court of Exchequer (which it became unnecessary to decide), that, if a witness, who refuses to produce the deed, be an attorney, relying on the privilege of his client, it is possible that, although the attorney might refuse to disclose the instrument which was confided to him by his client, the client himself might not be unwilling that it should be disclosed; and therefore, unless he is subpoenaed to produce the instrument, and refuses to do so, all has not been done which might be done to show the primary evidence unattainable; and, consequently, that secondary evidence is not admissible.

"In the present case, the client, William Chaplin, having attended on a common subpoena, and having been called as a witness, refused to permit the production of the book, which the attorney had brought into Court in obedience to a *subpoena duces tecum*. And the only objection is, that the client himself had not been served with a *subpoena duces tecum*.

"But we are of opinion,—in accordance with the decision of *Alderson, B.*, in *Doe dem. Loscombe v. Clifford*, 2 Car. & K. 448,—that, as the book was actually in Court, and the plaintiff had procured the attendance, as witnesses, of both the attorney and the client, who expressed in Court their refusal to allow the book to be produced, he had done everything that could be done to make apparent the impossibility of using the primary means of proof; and, consequently, that he is entitled to resort to secondary evidence.

"We are, therefore, of opinion, that the rule for a new trial must be made absolute." *Newton v. Chaplin*, 10 C. B. 356.

## THE LAW RELATING TO BRIBERY.

WE have noticed Mr. Warren's excellent Manual of Parliamentary Election Law;<sup>1</sup> but were unable to give any specimens of the work. It is rumoured that many questions of bribery will be brought before committees of the House of Commons in the ensuing Session, and it may therefore be interesting to our readers to read the state of the law as expounded by Mr. Warren. For this purpose we lay before them the following extracts:

"Having surveyed a great extent of that department of the laws of England relating to the constitution, the ascertainment, and the exercise of the parliamentary franchise, we have now to deal with certain direful agencies which impede the working of the system, however beautifully constructed for the attainment of a noble purpose. A given individual may be indisputably invested with the franchise; he may be the subject of no incapacity whatsoever; but be in all respects, in the eye of the law, possessed of an adequate degree of intelligence, integrity and independence. A candidate for

<sup>1</sup> See pp. 193, 242, *ante*.

the high post of the representative of that elector, may be free from all taint of disqualification. The conduct of every functionary concerned throughout every step of the proceedings may have been punctiliously exact and unexceptionable. Yet all may nevertheless be deranged and rendered abortive by the operation of the foul twin-disturbing forces of bribery and corruption. It is idle to moralise upon such a subject; for we have to deal with a glaring and disgraceful fact. The Legislature has of late years bestirred itself with an energy and anxiety which are real, though some have alleged them to be only pretended, to detect the existence of these disturbing forces, and counteract their operation. It has exerted all its vast powers for the purpose of discovering and punishing the actors, and rendering abortive their guilty proceedings. It has imposed on the former a blighting stigma; subjected them to serious disabilities in consequence of their crime, and liabilities to enormous penalties. It has visited with equal severity the two chief offenders and all participants in the offence. Yet bribery is seen perhaps in fuller action at this moment than ever before, as is testified on all hands by those most competent to form an opinion upon the subject."

"The position indeed of all parties entrusted with the electoral franchise, and all places where they exercise it, has become exceedingly critical, in consequence of the recent and greatly-augmented facilities which now exist for detecting bribery in even its subtlest and most varied forms. Devices hitherto successful in the hands of those characterized by a corrupt but consummate astuteness, will be henceforth found shorn of almost all their efficacy; for it is perhaps not going too far to say that *impunity* may be regarded as comparatively annihilated. The universal spirit of indignation against this opprobrium of the age, to which impressive utterance has been given by the most eminent statesmen belonging to all parties, and also, with a marvellous concurrence, by all the leading organs of public opinion, will not suffer itself to be baffled during the inquiries into corrupt practices which may henceforth be instituted. Candidates themselves can now be compelled to come before committees, or it may be into a court of law, there to be exposed to an acute and merciless examination, from which they cannot shelter themselves, except by the ignominious, perilous, and even *fatal* plea, that they decline to answer, on the ground that their answers may tend to *criminate* themselves. All their agents, friends and acquaintances, moreover, especially those most intimate, and in any way taking part in the election, will be subjected to similar scrutiny; as will be also every elector, whom vigilant and unsuspected observation may detect in a suspicious or equivocal position. While candidates, voters, and those who communicate with them are thus imperilled, it must be borne in mind that places themselves which are the scenes of bribery and corruption,

will henceforth be subjected to the unsparing and rigorous scrutiny of parliament, with the great additional powers conferred by the Act which has just received the assent of an expiring Parliament."

\* \* \* \* \*

"The committee which shall have first to decide the question, whether this Act empowers them to examine both the sitting member, and any candidate, or either of them, or the petitioner, will have undoubtedly an anxious duty to perform, and their decision will be looked for with the utmost interest. If it be in the affirmative,—that the words of both sections taken together are sufficiently extensive to meet the case of an election petition,—then will the position of all parties to it become one of great anxiety and responsibility. The effect of a sitting member, or petitioner, declining to answer a question directly pointing to the fact of bribery, or knowledge of it, on the ground that 'it might tend to criminate himself' (s. 3), may be conjectured. A gentleman, conscious of his innocence, would answer with confidence and unconcern: but what is to become of him with whom it is not so, and who is also aware that others are likely to be, and may have been actually, summoned to be examined, to whom similar questions will be put, and answered truly? In justice, however, to those who may be placed in so novel and startling a position, it ought to be intimated that their licence, in declining to answer questions of this description, is large. Lord Eldon thus lays down the rule in such a case: 'In no stage of the proceedings of this Court can a party be compelled to answer any question accusing himself, or any one in a series of questions that has a tendency to that effect; the rule in these cases being, that he is at liberty to protect himself against answering, not only the direct question, whether he did anything that was illegal, but also every question fairly appearing to be put with a view of drawing from him an answer containing nothing to affect him, except as it is one link in a chain of proof, that is to affect him.'

"The question, however, remains, as to the effect likely to be produced on the minds of a committee, on finding a member or candidate seeking this shelter; and when that fact is combined with other evidence before them, to which it gives an aspect and a strength which it had not previously."

\* "It may have been seen that the second section of stat. 14 & 15 Vict. c. 99, provides that nothing therein contained 'shall in any criminal proceeding render any husband or wife compellant or compellable to give evidence for or against each other.' Though this clause is not very likely to be brought into operation in the inquiries now under consideration, it may not be useless to inform the reader, that in a recent case in the Court of Queen's Bench it was decided, in conformity with the opinion of the then Lord Chancellor (Truro), in the case of *Percival v. Caney*, and of the Court of

## LAW PROMOTIONS.

THE Queen has been pleased to appoint *William Arrindell, Esq.*, to be Chief Justice of the Colony of British Guiana; and *Robert R. Craig, Esq.*, to be her Majesty's Attorney-General, and *John Lucie Smith, Esq.*, to be her Majesty's Solicitor-General for that colony.

Her Majesty has also been pleased to appoint *William A'Beckett, Esq.*, to be Chief Justice, and *Redmond Barry, Esq.*, to be Puisne Judge of the Supreme Court of the colony of Victoria.

## NOTES OF THE WEEK.

### VICE CHANCELLOR STUART.

THE appointment of John Stuart, Esq., Q.C., to the office of Third Vice-Chancellor in the Court of Chancery, vacant by the lamented death of Sir James Parker, which we mentioned last week, is confirmed. To the other qualifications for this judicial office, it may be noticed, that Mr. Stuart had necessarily great experience in the Law and Practice of the Court as the associate of Mr. Simons in reporting the decisions of the late V.C. Shadwell for many years.

## RECENT DECISIONS IN THE SUPERIOR COURTS.

### AND SHORT NOTES OF CASES.

#### Lord Chancellor.

*Jones v. Price and another; Price v. Maclean.*  
July 13, 14, 15, 1852.

PURCHASE OF REVERSIONARY INTEREST BY SOLICITOR FROM CLIENT—SETTING ASIDE.

*Held, on appeal from and confirming the decision of Vice-Chancellor Knight Bruce, without costs, that a solicitor cannot maintain the purchase of a reversionary interest from his client, where, at the time the contract was entered into he acted as her solicitor, and the solicitor subsequently called in had clearly acted under his direction and suggestion, and where, by the purchase-money being applied in payment of the debts of the plaintiff's deceased husband, to which she was not legally liable, she had derived no benefit from the transaction, but had, on the contrary, been obliged to give a promissory note for a balance remaining due.*

THIS was an appeal from the decision of Vice-Chancellor Knight Bruce setting aside an assignment to the defendants, in 1837, of a contingent reversionary interest by the plaintiff under the will of Mr. Benjamin Price, dated in 1820, but without costs, on repayment by the plaintiff to them of the purchase-money with interest at 5l. per cent. It appeared that the testator had left the residue of his property to his wife and daughter for life, and directed that, in the event of his daughter dying without issue, the capital was to be divided among the issue of his brother and his sister, who outlived the surviving tenant for life. In 1835, the plaintiff, as one of such issue, was entitled to a fifth part in the contingent reversionary interest, and her share was put up to auction, and was bought by the defendant Price, the manager of the Brecon Branch Bank, to which her husband was considerably indebted, but the contract was abandoned as the plaintiff, as a married woman, was unable to give a valid assignment, and on her husband's death, in 1837, it was again put up for sale, but was bought in for 1810l., and in August, 1837, the reversion

was offered for 1600l. to the Reversionary Interest Society, who, however, declined to purchase. The bank having pressed for payment of the sum due from her husband, the share was contracted to be sold to the defendants, Price and Thomas, who acted as her solicitor as well as solicitor to the Bank, for 1325l., and with an undertaking to pay 250l. more on the plaintiff surviving the tenant for life.

*Wigram, Malins, and Rogers for the plaintiff; Bethell, Glasse, and Berrey for defendant Thomas, J. Russell and Prendergast for defendant Price.* Cur. ad. vult.

The Lord Chancellor, after referring to the facts of the case, said, that it was remarkable that when the reversion was put up to auction, and when it was offered to the Reversionary Interest Society, the benefit of the survivorship to the whole residue was not also included. It was clear that at the time Mr. Thomas first agreed to buy the plaintiff's interest, the relation of solicitor and client existed between them,—it not being until after the contract had been entered into, that he suggested she should have another solicitor to manage the business on her behalf, and it appeared when another solicitor was called in, that he acted at the suggestion and by the direction of Mr. Thomas. It was utterly impossible, therefore, that the transaction should stand, because Mr. Thomas was well aware that when the offer was made to the Reversionary Interest Society, the supposed imperfections of title were visionary, and he had failed to undeceive the Society, and besides the purchase-money was applied mainly in paying debts, for which the plaintiff was not legally liable, and had received no benefit from the transactions, and it appeared she was obliged to give a promissory note for 46l. and some costs remaining due. As therefore the character of solicitor and client had not been severed, and the plaintiff had not had the benefit of another solicitor, the appeal would be dismissed, but, under the circumstances, without costs.

#### Lords Justices.

*Child v. Elsworth.* August 4, 1852.

WILL.—CONSTRUCTION.—TIME OF PAYMENT OF LEGACY.

*A testator, after giving all his real and per-*

Exchequer in that of *Barbat v. Allen*, that a wife is not rendered by that act a competent witness for her husband in an action by or against him. *Stapleton v. Croft*, 28th April, 1852, 16 Jurist, 408."

sonal estate to his wife for life, proceeded as follows:—"Also, I give and bequeath unto John, Thomas, Mary, Ellen, Elizabeth, Jane, and Margaret, the sons and daughters of my uncle William Deighton, 200*l.* each; also, to the children of Henry, the son of my said uncle William Deighton, the sum of 200*l.*, to be divided equally amongst them, to be paid 12 months after the decease of my said wife." Held, reversing the decision of Vice-Chancellor Turner, that the children of William Deighton were entitled to payment of their legacy only after the death of the widow, and not to immediate payment.

THE testator, Henry Elsworth, by his will, dated in 1833, after giving all his real and personal to his wife, the defendant, for life, proceeded thus:—"Also, I give and bequeath unto John, Thomas, Mary, Ellen, Elizabeth, Jane, and Margaret, the sons and daughters of my uncle, William Deighton, 200*l.* each; also to the children of Henry, the son of my said uncle, William Deighton, the sum of 200*l.*, to be divided equally amongst them, to be paid 12 months after the decease of my said wife." The Vice-Chancellor Turner having held that the children of William Deighton were entitled to immediate payment of their legacy, and that the direction for payment after the widow's death only applied to the bequest to Henry's children, this appeal was presented.

*Stuart, Glasse, J. V. Prior, and Springall Thompson*, appeared for the several parties.

The Lords Justices said, that as it appeared, on reference to the original will, that the clause was written continuously without any break, and ended with a full stop, the time of payment must be held to control the whole clause, and the appeal would therefore be allowed, but the legacy would have to be paid into Court, and the dividends be paid to the widow, when invested.

### Master of the Rolls.

*Heaton v. Dearden.* July 1, 1852.

AGREEMENT FOR LEASE OF COAL MINES.—SPECIFIC PERFORMANCE.—TENANTS IN COMMON.—PARTITION.

*Certain land was conveyed, as it appeared, in trust for F. and D., and F. agreed to demise to certain persons all the coal lying under the land, covenantee to bear them harmless from all litigation in respect of the coal, but he died before the lease was executed, and the grantees afterwards assigned to the plaintiff: Held, that he was entitled, as against the defendant, who was the heir-at-law of F., to a decree for the specific performance of the agreement, the terms to be settled by the Master in case of dispute, and that afterwards there must be a decree for a partition if the parties could not arrange the portion to be worked by the plaintiff.*

By a deed dated in August, 1802, the assignees of a Mr. Milns conveyed four-twelfths of certain land at Tutor's Hill, Spotland, Lan-

cashire, to Mr. Thomas Ferrand, in trust for Robert Moore, the owner of three other twelfths, and in December, 1807, Mr. Moore, conveyed, in consideration of 409*l.*, such seven-twelfths to Mr. John Buckley, it appeared, as trustee for Mr. Thomas Ferrand and Mr. James Dearden, who paid the money, although the deed contained no declaration of trust, and Mr. Ferrand entered into possession and the title-deeds were deposited with him. In 1822, Mrs. Moore instituted a suit to set aside the deed of December, 1807, on the ground of fraud, and, on the hearing in 1842, an issue was directed which came on for trial at Liverpool in April, 1843, when the defendant, Mr. Dearden, as devisee under his father's will, compromised Mrs. Moore's claim for 1,500*l.*, and she executed a deed in May, 1843, conveying to him her interest. By an agreement dated in May, 1844, Mr. Ferrand agreed, in consideration of 330*l.*, to demise to Mr. Thomas Watson and three others all the coal lying under the land in question at 27*d.* per acre, covenanting to bear them harmless from all litigation in respect of the coal, and Mr. Watson and the others subsequently assigned their interest to the plaintiff, Mr. Heaton, who entered into a negotiation with Mr. Ferrand for a lease. Mr. Ferrand, however, died in February, 1845, before the completion of the transaction, without devising the property by will, and the defendant took the same as his heir-at-law, and had also obtained a conveyance of the legal estate from Mr. Buckley's heir. The plaintiff then applied to the defendant to execute a lease, and on his refusal he filed this bill as assignee for the specific performance of the agreement of May, 1844, for a lease.

*R. Palmer and J. V. Prior* for the plaintiff; *Roupell and Hetherington* for the defendant; *Teed* for Mr. Buckley, the trustee.

The Master of the Rolls said, that the plaintiff was entitled to a decree for the specific performance of the agreement against the defendant as heir-at-law of Mr. Ferrand, and that there must be a reference to the Master to settle the demise if the parties could not agree. When that was done, there must be a decree for a partition, unless the portion was arranged in respect of which the plaintiff was to work the minerals.

### Vice-Chancellor Turner.

*In re Barton's Trust.* June 25, 1852.

REQUEST TO JOINT-TENANTS.—EFFECT OF MARRIAGE ON TENANCY.

*A sum was given to E. at the death of the testator's wife, but upon his death before her, among his children. E. died before the tenant for life, and one of his children married and also died before her death: Held, that the child's share survived to the other children and did not pass to her husband, and that the marriage did not sever the joint-tenancy.*

THE testator, Mr. Barton, by his will, gave

all his property to his wife, for life, and after her death he directed that the sum of 2,000*l.* should go to Mr. Frederick Ekens, and in the event of his death before the tenant for life, such sum to be divided among his children. It appeared that Mr. Ekens died before Mrs. Barton, leaving four children, and that one of them had married and also died in Mrs. Barton's lifetime, but before her husband, who afterwards became a bankrupt. The question was, whether the share of such deceased child passed to the husband or went to the other children by survivorship.

*Cur. ad. vult.*

The *Vice-Chancellor* said, if this had been a chattel real, such as a term of years, the coverture would clearly not sever the joint-tenancy. Now, here, although the chattel was personal, it was also reversionary, and the husband's right only arose on his surviving his wife; but on the death of the wife, the right of the other joint-tenants also arose, and the question was, therefore, as to which of the two rights was to be preferred. The question must be decided by the doctrine laid down by Coke on Littleton, sect. 185 *b.*, that "in consideration of law there is a priority of time in an instant," "and the reason of this priority is, that the survivor claimeth by the first feoffor, and therefore, in judgment of law, his title is paramount the title of the devisee;" and the other children accordingly were entitled by survivorship.

*Vice-Chancellor Kindersley.*

*In re Tookey's Trust.* July 31, 1852.

RAILWAY COMPANY.—PETITION FOR PAYMENT OF PURCHASE-MONEY OUT OF COURT.—COSTS.

*A direction was made for the insertion in an order for the payment out of Court of the purchase-money of lands taken by a railway company, excepting from the costs to be paid by the company, such as were "occasioned by litigation between adverse claimants," in accordance with sect. 80 of the 8 Vict. c. 18.*

*Speed* appeared on behalf of the Bucks Railway Company in this case, which was a petition for the payment out of Court of the purchase-money for lands taken for the purposes of the railway, and asked that a direction might be inserted in the order, in accordance with sect. 80

of the *Lands' Clauses Act*, 8 Vict. c. 18, excepting from the costs to be paid by the company, such as were "occasioned by litigation between adverse claimants,"—there appearing to have been extra costs in reference to the rights of parties under the will of Mr. Thomas Prentice.

*Toller* and *Dickinson* for the petitioners, contra.

The *Vice-Chancellor*, after consulting the registrar as to the practice, made the order as asked.

*Vice-Chancellor Parker.*

*Waters v. Wood.* July 13, 1852.

WILL.—CONSTRUCTION.—REQUEST OF "POLICIES."—"SHARES IN PUBLIC COMPANIES."

*A testator bequeathed to T. all the "policies of life assurance," which had been effected in two insurance offices named, and the monies payable in respect thereof, and to his wife all and singular the other policies of life insurance effected in any other office or offices, with the monies payable in respect thereof; and the will contained a residuary devise of all his "shares in public companies." The testator had no "policies," but "shares" in the two offices named: Held, that the bequest failed, and that the shares passed under the residuary devise.*

THIS was a special case under the 13 & 14 Vict. c. 35. The testator, John Wood, by his will, gave and bequeathed to Harriet Taylor, the sum of 1,000*l.*, "and all the policies of life insurance which I have effected in the Union and Law Life Insurance Offices, and the monies payable in respect thereof," and to his wife "all and singular the other policies of life insurance which I have effected in any other office or offices, and the monies payable in respect thereof," and in the residuary bequest he gave all his "shares in public companies." The testator held 20 shares, but no policies in the two offices named.

*Daniel* and *Speed* for the plaintiff; *Campbell* and *Kennion* for the defendant; *Roupell* for the executors and trustees.

The *Vice-Chancellor* said, that the testator had made a specific bequest of what he believed he had, but which he had not, and that it therefore failed, and the shares passed under the residuary bequest.

## ANALYTICAL DIGEST OF CASES, REPORTED IN ALL THE COURTS.

### Courts of Equity.

[For the previous Sections of the Digest in this Volume, see

*Privy Council*: Appeals, p. 17.

*House of Lords*: Appeals, p. 38.

*Courts of Equity*:

Law of Attorneys and Solicitors, p. 125.

Contributories under the Winding-up Act, p. 143.

Law of Trustees, p. 165.

Lunacy, p. 185.

Law relating to Infants, p. 186.

Law relating to Charities, p. 203.

Appeals in Bankruptcy, p. 225.

Construction of Statutes, pp. 104, 286, 306, 325.

Law of Wills, 346, 367.]



## LAW OF WILLS.

## CONSTRUCTION.

[Continued from p. 368.]

4. "And" read "or."—*Annual profits*.—Testator, tenant for life under a settlement of the B. H. estate and other lands, remainder to his first and other sons in tail male; remainder to A., his brother, for life, with remainder to his first and other sons in tail male; remainder to other brothers of the testator in like manner; and, after other intermediate limitations, remainder over to the sisters of the testator as tenants in common in tail general.

The testator, by his will, gave certain specific things to be enjoyed by the person or persons who for the time being should be entitled to the freehold or inheritance of the family estate at Stapleton, as and in the nature of heirlooms. He gave his furniture, plate, &c., to his brother A. He directed a sum of 1,000*l.*, secured to him on the B. H. estate and other estates, to sink into the freehold and inheritance of the said estates, that the same might merge them; and the rents and arrears of rent, with timber felled, and other annual profits due to him at the time of his decease from the B. H. estate, unto the person or persons who should be entitled to the freehold and inheritance of the same estate, in possession on his decease. He gave his residue to his two brothers, B. and C.; and he appointed his brother A. his sole executor. B. died in the testator's lifetime.

Held, 1st, that in the gift of the rents, &c., the word *and* must be read *or*, and that they passed to A. although he was entitled only to the freehold; 2ndly, that certain prepared brick earth dug out of the estate by the tenant for life, and lying upon it at his death, and certain tiles so made and remaining on the estate, were comprised in, and passed by the words *other annual profits*; 3rdly, that certain apportionable parts of the rents which, under the Apportionment Act, went to the testator's executor as part of his assets, passed under the words *due to him at the time of his decease*. *Stapleton v. Stapleton*, 2 Sim. N. S. 212.

5. "Or" cannot be read as "and" where substitution of objects and not succession intended.—"Heirs" construed "children," and not "issue."—*Remoteness*.—The testator directed the application of the surplus income of his estate for the maintenance of his children during their minority or apprenticeship, and the application of certain sums for their advancement; and after his youngest child should have attained 21, he directed his executors to divide any surplus in their hands, every three years, during his wife's life or widowhood, and, after her death or marriage, every year, equally amongst his children, or their heirs instead of any one that might happen to be dead, until the expiration of 50 years from the time of his death; and that, at the end of the said 50 years, his executors should sell his remaining estate, and pay, discharge, or divide the money for the same amongst his children (naming them), or any

of their heirs in their stead, and if any of his said children should die without lawful issue, such share or shares of those so dying to belong to the survivors or their lawful heirs, equally: *Held*, that the Court could not read "or" as "and," where the purpose was manifestly substitution of objects, and not succession.

That the word "heirs" must be construed "issue," and not "children;" and that it was not a ground for departing from such meaning, that the consequence of adhering to it would be to render the will void for remoteness.

That the words of the gift did not direct a substitution, once for all, of persons to take each child's share at a given time not too remote, but contained a running direction to the trustees, to pay the income from time to time, during the whole period of 50 years, to the children, or, in case of their deaths, to such of their lineal descendants as might from time to time come in *esse*.

That the limitations of the property at the end of the term of 50 years were void for remoteness. *Speakman v. Speakman*, 8 Hare, 180.

Case cited in the judgment: *Salisbury v. Pett*, 3 Hare, 86.

6. *Petition*.—*Costs*.—Testator directed that a sum of stock standing in his name should be divided between and amongst the relations of his late wife, in such manner, shares, and proportions as would have been the case in case she had died possessed of it, a spinster, and intestate. The wife had 16 next of kin living at her death. Five of them died before the testator.

Held, that the 11 survivors took only a 16th each, and that the other five shares lapsed into the residue; and ought to bear the costs of the petitioners and respondents. *In re Ham's Trusts, ex parte Biles*, 2 Sim. N. S. 106.

7. "Then."—The word "then" construed as pointing to the event, and not to the time. *Gundry v. Pinniger*, 14 Beav. 94.

8. *Unreceived dividends not ready money*.—Unreceived dividends held not to pass under the words "ready money." *May v. Grave*, 3 De G. & S. 462.

Cases cited in the judgment: *Vaisey v. Reynolds*, 5 Russ. 12; *Parker v. Marchant*, 1 Y. & C., Ch. Ca., 290; *Fryen v. Ranken*, 11 Sim. 55.

9. *Vested interests*.—*Residue*.—Testator directed the dividends of his residue to be paid to his three children, A., B., and C., in certain shares, and that, after the decease of any one or two of them until the decease of the survivor, the shares of the deceased parents should go to their respective children; and that, after the decease of his surviving child, the capital of the residue should be divided amongst the children of his said children, *per capita*. A. died first, B. next, and C. last. Both A. and C. left children, some of whom were living at C.'s death. B. had children, but they all died in her lifetime.

*Held*, nevertheless, that they took vested, transmissible interests in the dividends of B.'s share of the residue, which accrued between B.'s and C.'s deaths. *Homer v. Gould*, 1 Sim. N. S. 541.

## DEVISE.

1. *Land "freely to be possessed and enjoyed."*—*Life estate*.—The words, "I bequeath to my sons, A. and B., and likewise constitute and ordain them my sole executors of this my will, all and singular my lands, messuages and tenements, with all my goods and chattels, by them freely to be possessed and enjoyed," *held*, not to be a devise in fee. *Bromitt v. Moor*, 9 Hare, 378.

2. *Power to sell or raise money by way of mortgage*.—*Condition precedent*.—*W. D.* devised certain estates to *R. D.*, with a power to sell and dispose of the premises, or to raise any sum or sums of money by way of mortgage or otherwise, as he should think proper, with a proviso, that such portion of all and every sum and sums of money so raised, "either by sale or mortgage, as shall be unexpended at my decease," &c., should be charged by him on certain property of his own, in favour of other parties: *Held*, establishing the validity of mortgages executed by *R. D.*, that this proviso did not operate as a condition precedent, but was a limitation over of so much of the money to be raised by *R. D.* as should be unexpended. *Watkins v. Williams*, 3 M. & G. 622; *Harcord v. Church*, ib.

## ESTATE TAIL.

*Limitations on its failure*.—A testator, *W.*, devised his real estates to trustees, upon trust to receive the rents, and, on his son John arriving at the age of 25 years, to let him into possession, but neither he nor his heirs to the third generation were to sell or mortgage the same, it being the testator's desire that the property should remain in the *W.* name. If John should die without leaving lawful issue, it was the testator's will that his daughter Ann should have his share, subject to the same limitations. If John and Ann should die under age, or without leaving issue, the testator devised the property, after deducting a certain sum from the produce in favour of his (the testator's) daughter Elizabeth, to and for the benefit of the plaintiffs. The testator had the three children named in his will living at his death, and no more. Elizabeth died at the age of two years; Ann survived her, and died at the age of 19 years, unmarried; and John, the last survivor, died, aged 30 years, leaving children, who all died unmarried and without issue. John, by his will, devised part of the father's real estate to the defendants: *Held*, first, that the devisees of John, the son, took no estate in the hereditaments of *W.* the father, devised by his will; and, 2ndly, that the plaintiffs took the estates in the hereditaments of *W.*, the father, and in such manner as given to them by the will of *W.* the father. *Mortimer v. Hartley*, 3 De G. & S. 316.

Cases cited in the judgment: *Brownsword v.*

*Edwards*, 3 Ves. S. 243; *Murray v. Jones*, 2 V. & B. 313.

## LEGACY.

1. *Charge on copyholds*.—*Personal remedy of legatees against devise*.—A testatrix devised copyholds to A., subject to the payment of 400*l.* to a legatee. The legatee's husband attempted the execution of the will. The devisee sold to a purchaser for the full value of the estate, both parties treating the legacy as void, and not noticing it in the conveyance. The purchaser afterwards re-sold: *Held*, that the legatee had no remedy in equity against the devisee, to recover from him, personally, the amount of his legacy. *Jillard v. Edgar*, 3 De G. & S. 502.

Cases cited in the judgment: *Denn v. Mellor v. Moor*, 5 T. R. 558; 1 B. & P. 558; 2 B. & P. 247; 7 Bro. P. C. 607; *Doe v. Briscoe v. Clarke*, 2 B. & P., N. R. 343; *Roe v. Daw*, 3 M. & Selw. 525.

2. *Inaccurate number of a class of legatees corrected*.—A testatrix, in 1831, bequeathing as follows:—"To the three children of my niece, *F. W.*, the sum of 500*l.* each." At the date of this will, *F. W.* had three children only, as the testatrix knew. *F. W.* subsequently had six other children, of the birth of each of whom the testatrix was informed. The testatrix in 1836, 1842, and 1844, made three new wills, successively revoking the former, in each of which the bequest was repeated in the same words: *Held*, that the bequest in the will of 1844 must be read as if the word "three" had been omitted, or had been the word "nine." *Daniell v. Daniell*, 3 De G. & S. 337.

3. *Interest*.—Testator gave the produce of his share and interest in his co-partnership business to his wife, and also the interest of the capital sum of 1,000*l.* for her sole use and benefit free from the debts or control of any husband she might marry, and her receipt to be a sufficient discharge to his executors; and he gave all his furniture, plate, &c., to her absolutely.

*Held*, that the gift of the interest of the 1,000*l.* passed the principal. *Humphrey v. Humphrey*, 1 Sim. N. S. 536.

4. *Next of kin ex parte maternâ*.—*Class*.—Bequest to A. B. for life, and afterwards to her children; but, in default of children, "to pay or assign and transfer" to C. D., if living, but if dead, to his next of kin *ex parte maternâ*. C. D. died before A. B.: *Held*, first, that the next of kin were to be ascertained at the death of C. D., and not of A. B.; and, secondly, that the next of kin *ex parte maternâ* were not excluded, because they also filled the character of next of kin *ex parte paternâ*. *Gundry v. Pinniger*, 14 Beav. 94.

Case cited in the judgment: *Smith v. Palmer*, 7 Hare, 225.

5. *Uncertainty*.—*Incomplete exception*.—A gift to all the grandchildren of the testatrix, "with the exception of one, viz., —," established as a gift to the class, not affected by the

incomplete exception. *Illingworth v. Cooke*, 9 Hare, 37.

#### LONG ANNUITIES AND LEASEHOLDS.

**Three per Cents.—Tenant for life.**—*Income for first year.*—A testator bequeathed all his money, securities for money, money in the funds, household furniture, cattle, and all other his personal estate and effects unto two trustees, upon trust to pay his debts and legacies, and subject to the payment of a legacy, to stand possessed upon the trusts after-mentioned. He then devised his freehold estates to trustees, upon trust to permit his wife to reside at his house, and to use the household furniture, plate, linen, and china therein for her life, and to "pay the rents and profits of his real estate," and "the interest, dividends, and proceeds to arise from his said money, and securities for money, money in the funds, and personal estate, therebefore bequeathed" to her for life, and, after her decease, to sell his real estate, and divide and pay the purchase-mones, "and pay, assign, or transfer his said money, and securities for money, money in the funds, and personal estate," unto his children. The testator possessed long annuities and leaseholds: *Held*, that they ought to be converted into Three per Cents., and that the widow was merely entitled to the dividends thereon.

The Master of the Rolls (following *Dimes v. Scott*, 4 Russ. 195; *Taylor v. Clark*, 1 Hare, 161, and *Sutherland v. Cooke*, 1 Coll. p. 503; in support to *Douglas v. Congreve*, 1 Keen, 410, and other cases), *held*, that a tenant for life of a residue was entitled, during the first year, to the dividends on so much Three per Cents. as would have been produced by the conversion of the property at the end of that year. *Morgan v. Morgan*, 14 Beav. 72.

#### NEXT OF KIN.

**At time of testator's death.**—A testator, after bequeathing his residuary estate to trustees, upon trust for his grandson, the child of his deceased daughter, for his life, directed them, in case his grandson should die under 21 without issue, then to pay the rents and profits unto and amongst his (the testator's) "next of kin, in such proportions and manner as is provided by the Statute of Distributions," and in case the grandson should die after attaining 21 without leaving issue, or such issue should die under 21, or unmarried, or without issue, then to distribute the whole of the residue amongst such next of kin in the same proportions and manner: *Held*, that the gift was to the next of kin of the testator at his death, and this, notwithstanding his sole next of kin, at the time of making the will, and at the time of his death, was the grandson of the testator, to whom the life estate was given, and the sole next of kin of the grandson at the same times was the father of the grandson, the husband of the deceased daughter of the testator. *Bird v. Lackie*, 8 Hare, 301.

#### PASSING ESTATE AND EFFECTS.

A will, made after the Wills' Act, 1 Vict. c.

26, whereby the testator gave, devised, and bequeathed all his estate and effects whatsoever and wheresoever, and of what nature or kind soever, to A., to be paid, assigned, or transferred to him, on his attaining 21: *Held*, to pass real estate (copyhold of inheritance) subsequently acquired, notwithstanding a direction in the will, that, in the meantime, the executors should apply the interest, dividends, and proceeds of such estate and effects, or so much thereof, or so much of the principal thereof, as they should think necessary, in the maintenance, education, and putting forth of A. in the world, and should invest the said estate and effects on real or personal security at their discretion.

The directions applicable only to personal estate may, in such a case, be construed as referring not to the whole subject-matter of the gift, but to such portions of the estate as may consist of personalty, to which such directions may be fitly applied. *Stokes v. Salemons*, 9 Hare, 75.

Case cited in the judgment: *Saumarez v. Saumarez*, 4 My. & Cr. 331.

#### POWER.

**1. Construction.—Discretion of trustees.**—A testatrix gave a fund to A. and B., who were her executors, in trust to place out the same at interest, and to apply the interest thereof, or the principal, for the benefit of Mary Ann S., in such way as they might, in their discretion, think fit, during her life, it being the wish of the testatrix that they should dispose of the principal and interest, or any part, or should withhold the whole and let the interest accumulate; and, upon the decease of Mary Ann S., in case the trust fund, or any part thereof, or interest, should then remain undisposed of, upon trusts for other persons. A. and B. paid the interest of the trust fund and 100*l.*, part of the capital, to Mary Ann S., and died without any other exercise of their discretionary power: *Held*, that Mary Ann S. was entitled to the whole of the trust funds. *Gude v. Worthington*, 3 De G. & S. 389.

**2. To continue monies invested in trade.**—A gift and devise by one of the partners in a cotton mill, of all his property, estate, and effects to trustees, upon trust to lay out and invest two third parts thereof upon real or good personal security, or to transfer the same, and allow it to remain in the concern, of which he was one of the co-partners, in the names of his trustees, and alter, vary, change, and transmute the same as they should think fit, and stand possessed of the same, upon trust, for the two sons of the testator, with certain powers of advancement out of their respective shares: *Held*, to authorise the executors to continue the monies of the testator in the trade, but not to trade with the monies by becoming partners in the firm. *Travis v. Milne*, 9 Hare, 141; *Milne v. Same*, *ib.*

[To be continued.]

# The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

SATURDAY, SEPTEMBER 18, 1852.

## COMMON LAW PROCEDURE ACT.

### WRITS TO COMMENCE ACTIONS.

BOTH the efficacy and sufficiency of the Act for the Amendment of the Practice and Procedure of the Superior Courts of Law seem to be questioned by some who regard with unqualified satisfaction and approval other measures of Law Reform by which the last Session of the late Parliament is rendered memorable. We look in vain amongst its provisions for any very startling novelties—the ancient foundations remain undisturbed—the endeavour appears to have been rather to restore, improve, and lop-off exuberances, than to uproot and destroy, and the appetite for Legal Reforms is too much excited by stimulants to accept contentedly a measure of such limited pretension. Hence it is, perhaps, that a Statute as to the operation of which great expectations were once entertained, is now pronounced—even before trial—utterly inadequate to the exigency of the time. Without staying, at present, to inquire how far this condemnatory judgment is well founded, we may be permitted briefly to advert to the history of the Act and the circumstances under which it obtained the sanction of Parliament.

Our readers cannot fail to recollect, that the Common Law Procedure Act is the result of the labours of a very learned body of Commissioners, appointed by Lord John Russell's Government, including the Chief Justice of the Common Pleas, Mr. Baron Martin, the late Attorney-General, one of the Masters of the Court of Exchequer, and Messrs. Bramwell and Willes of the Common Law Bar. After much discussion and consideration, and the examination of several witnesses, the Commissioners presented an elaborate report, upon which a Bill was

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drawn up and presented to the House of Lords by the late Lord Chancellor Truro. This Bill was adopted by Lord Derby's Government in all its integrity. It was referred to a Select Committee of the Law Lords, at the instance of Lord Lyndhurst, and passed through both Houses of Parliament without any alteration involving matter of principle, or indeed any alteration which should be considered as of substance, with a single exception to which reference will be hereafter made, and which was introduced upon the recommendation of the Select Committee of the House of Lords. Notwithstanding the caution and deliberation with which it has been framed, and the weight of judicial authority by which it is understood to be supported and recommended, it may no doubt happen, when the Act comes into operation, that the amount of improvement effected by it will be found not comprehensive enough, to satisfy the expectations of the public. Still, the experiment *must* now be tried, and it cannot be supposed that a measure, upon which so much labour and legislative attention has been bestowed, should be abandoned before its short-comings and defects have been ascertained by subjecting its provisions to the test of actual experience. Even amongst those who complain of the inadequacy of its provisions, it is almost universally admitted that the changes which the Act introduces are all in the right direction, and the experiment about to be tried will afford the best and safest means of ascertaining whether further alterations can be advantageously made in the same direction.

Under such circumstances, those of our readers who have not already made themselves acquainted with the provisions of the Act, will shortly find it indispensable to do so, and are entitled to our best assistance. The great extent of the Act precluded the

publication of the whole in a single Number, and suggested the expediency of adopting the divisional arrangement indicated in the Act itself, by printing a portion in successive Numbers. The division relating to "the commencement of writs," has already appeared, and the following divisions will be found in subsequent pages. Whilst the measure was under the consideration of the Legislature, attention was frequently invited in these pages to its provisions, and now that they have acquired the authority of law, and must necessarily become the subject of judicial construction, it is hoped that a more minute examination of their scope and tendency may not prove altogether useless, even though it should occasionally involve some degree of repetition.

The division of the Act relating to the writs for the commencement of personal actions, distinguishes between cases in which the defendant resides *within* the jurisdiction of the Superior Courts, and those cases in which the defendant resides *beyond* the jurisdiction.

In ordinary cases, where the defendant resides within the jurisdiction the action is to commence, as heretofore, by the issue of a writ of summons, the form of which is prescribed by the Act, and does not differ materially from that heretofore in use, under the authority of the Uniformity of Process Act (2 & 3 Wm. 4, c. 39). The writ is to be issued, unless otherwise directed by the Court, by the same officers who have heretofore issued this description of process in the respective Courts, and is to be addressed to the defendant by his Christian and surname, mentioning the place and county of his residence or supposed residence, or else the place where he is or is supposed to be. It had hitherto been considered necessary also to mention the form of action in the writ, describing it as an action "on promises," "in trespass," or "on the case," and the selection of the right form of action was occasionally not without difficulty, as it involved the necessity of an accurate knowledge of the facts upon which the action was founded, and not unfrequently of the principles and arbitrary rules of pleading. If, from ignorance or inadvertence, the form of action was improperly or inaccurately stated in the writ of summons, the mistake became patent when the plaintiff proceeded to declare, and the declaration might then be set aside as irregular, because it did not follow the form of action as described in the writ. The peril to which a plaintiff was subjected by under-

taking to state the nature of his action in the writ can no longer exist however, as it is now expressly enacted, that *it shall not be necessary to mention any form or cause of action in the writ of summons*. In conformity with the pre-existing practice, it will still be necessary to insert in the writ, the *names of all the defendants*, and not to insert the names of any but those who are defendants in the particular action in reference to which the writ has been issued. The writ is to bear date on the day on which it issues, and, in order that it may appear from what Court it issues, it will continue to be tested in the name of the Lord Chief Justice, or Lord Chief Baron, of the Court from which the writ issues; or, in case of a vacancy, in the name of a senior Puisne Judge of the Court. We presume that the use of the indefinite article in this clause, as noticed by one of our correspondents,<sup>1</sup> is a mere inadvertence, and that it is intended to provide, when the office of Chief Justice or Chief Baron is not filled, that *the* senior Judge's name shall be substituted so as to indicate on the face of the writ the Court from which it issues.

The practice is to be preserved of *indorsing* on the writ of summons *the name and abode of the attorney* suing it out, and of both attorney and agent when the writ is sued out by the agent of a country attorney, and in case no attorney is employed, the indorsement must show that the writ has been sued out by the plaintiff in person, and it is requisite to state the hamlet, street, and number of the house, as well as the city, town, or parish of the plaintiff's residence. It is also provided that the attorney whose name is indorsed on a writ, shall, on demand made in writing, declare forthwith, if the writ has been issued by his authority, and shall also, by direction of the Court or a Judge, be compelled to declare in writing, within a specified time, "the profession, occupation, or quality," and place of abode of the plaintiff. When the action is brought to recover a debt, *the amount of the debt*, and the sum claimed by the plaintiff's attorney for the *costs* of the writ is also to be indorsed, together with the announcement, that upon payment of debt and costs within four days from service, further proceedings will be stayed. The payment of costs as indorsed is not to preclude the defendant, who is at liberty, if he think fit, and notwithstanding such pay-

<sup>1</sup> See Postscript to Leg. Obs. of the 28th August last.

ment, to have the costs taxed, and the costs of taxation will depend, as in ordinary cases, upon the result, and if more than one-sixth is disallowed, will fall upon the plaintiff's attorney.

At any time, within six months from the issuing of the original writ of summons, *concurrent writs* may issue, tested on the same day with the original writ, but marked by a seal or stamp with the word "concurrent," and showing on its face the date of issuing such concurrent writ. The duration of the concurrent writ is not to exceed that of the original writ, which is to be in force for six calendar months from the date, or, if renewed, from the date of such renewal. Under the Uniformity of Process Act, the duration of writs of summons, it will be remembered, was limited to four months, but the Act under consideration repeals this provision of the Act 2 Wm. 4, c. 39, as well as those relating to the issue of alias and pluries writs, and to the proceedings necessary for making the first writ available to prevent the operation of the Statute of Limitations. In lieu of the somewhat complicated proceedings heretofore necessary in order to save the Statute of Limitations, it is now provided that this shall be effected merely by having the original or concurrent writs of summons marked at the Masters' Office, with a seal bearing the date of the day, month, and year of renewal, which marking is to give the original or concurrent writ renewed force for an extended period of six months. Writs issued before the commencement of the Act may be renewed under its authority; and in every case the production of a writ marked with the proper seal will be sufficient evidence that it has been renewed, and show where the action was commenced.

As to the *service of the writ of summons*, it is now provided, that the writ may be served in any county, without regard to the residence or supposed residence of the defendant as mentioned in the writ, and the person serving the writ is enjoined, *within three days*, to indorse on the writ the date of the service, and in default of such indorsement the plaintiff will not be at liberty to proceed in case of the defendant's non-appearance. Provision is made for the service of writs on corporate bodies, and on the inhabitants of hundreds, cities, towns, &c. It is intended that whenever it is practicable, the *service shall*, as heretofore, *be personal*, but in lieu of the justly condemned proceeding by way of distringas, the new Act provides that where the Court or a Judge is satisfied that reason-

able efforts have been made to effect service, and either that the writ has come to the knowledge of the defendant, or that he wilfully evades service, and has not appeared to the writ, the plaintiff may obtain an *order to proceed, as if personal service had been effected*, subject to such conditions as may be deemed fit.

The course of proceeding to be pursued under the new Act, when the defendant resides beyond the limits of the jurisdiction, will be more conveniently explained in a separate article.

## NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

### COMMON LAW PROCEDURE.

15 & 16 VICT. c. 76.

### COMMENCEMENT OF ACTIONS.

[Continued from p. 377, ante.]

23. Any affidavit for the purpose of enabling the Court or a judge to direct proceedings to be taken against a defendant residing out of the jurisdiction of the said Courts may be sworn before any consul general, consul, vice-consul, or consular agent for the time being, appointed by her majesty at any foreign port or place, and every affidavit so sworn by virtue of this Act may be used and shall be admitted in evidence, saving all just exceptions, provided it purport to be signed by such consul general, consul, vice-consul, or consular agent, upon proof of the official character and signature of the person appearing to have signed the same provided always, that if any person shall forge the signature of any such affidavit, or shall use or tender in evidence any such affidavit with a false or counterfeit signature thereto, knowing the same to be false or counterfeit, he shall be guilty of felony, and shall upon conviction be liable to transportation for seven years, or to imprisonment for any term not exceeding three years, nor less than one year, with hard labour; and every person who shall be charged with committing any felony under this Act may be dealt with, indicted, tried, and, if convicted, sentenced, and his offence may be laid and charged to have been committed in the county or place in which he shall be apprehended or be in custody; and every accessory before or after the fact to any such offence may be dealt with, indicted, tried, and, if convicted, sentenced, and his offence may be laid and charged to have been committed, in any county or place in which the principal offender may be tried: provided also, that if any person shall wilfully and corruptly make a false affidavit before such consul general, consul, vice-consul, or consular agent, every person so offending shall be deemed and taken to be guilty of perjury, in like manner as if such false affidavit had been made in England before competent authority, and shall and may be dealt with, indicted, tried, and, if convicted, sentenced, and his

offence may be laid and charged to have been committed, in any county or place in which he shall be apprehended or be in custody, as if his offence had been actually committed in that county or place.

24. From the time when this Act shall commence and take effect, so much of the said Act of his late majesty King Wm. the 4th as relates to the writ of distringas, and the proceeding thereon, whether for the purpose of compelling appearance or for proceedings to outlawry, shall be repealed, except so far as may be necessary for the purpose of giving effect to proceedings already taken, or to be taken after the commencement of this Act, under or by reason of any writ of distringas issued before the commencement of this Act, or under any rule or order authorizing the issuing of such writ, and made before the commencement of this Act.

25. In all cases where the defendant resides within the jurisdiction of the Court, and the claim is for a debt or liquidated demand in money, with or without interest, arising upon a contract, express or implied, as, for instance, on a bill of exchange, promissory note, or cheque, or other simple contract debt, or on a bond or contract under seal for payment of a liquidated amount of money, or on a statute where the sum sought to be recovered is a fixed sum of money, or in the nature of a debt, or on a guarantee, whether under seal or not, where the claim against the principal is in respect of such debt or liquidated demand, bill, cheque, or note, the plaintiff shall be at liberty to make upon the writ of summons and copy thereof a special indorsement of the particulars of his claim, in the form contained in the schedule (A.) to this Act annexed, marked No. 4, or to the like effect; and when a writ of summons has been indorsed in the special form hereinbefore mentioned, the indorsement shall be considered as particulars of demand, and no further or other particulars of demand need be delivered, unless ordered by the Court or a Judge.

#### APPEARANCE AND PROCEEDINGS IN DEFAULT.

And with respect to the appearance of the defendant, and proceedings of the plaintiff in default of appearance, be it enacted as follows:

26. From the time when this Act shall commence and take effect, so much of a certain Act of Parliament passed in the twelfth year of the reign of his late majesty King George the 1st, intitled "An Act to prevent frivolous and vexatious arrests," and so much of the said Act of his late majesty King William the 4th as relates to the entering an appearance for the defendant by the plaintiff in any action in any of the said superior Courts, shall be repealed, except so far as may be necessary to support proceedings heretofore taken, and no appearance need be entered by the plaintiff for the defendant.

27. In case of non-appearance by the de-

fendant, where the writ of summons is indorsed in the special form hereinbefore provided, it shall and may be lawful for the plaintiff, on filing an affidavit of personal service of the writ of summons, or a Judge's order for leave to proceed under the provisions of this Act, and a copy of the writ of summons, at once to sign final judgment in the form contained in the schedule (A.) to this Act annexed, marked No. 5 (on which judgment no proceeding in error shall lie), for any sum not exceeding the sum indorsed on the writ, together with interest at the rate specified, if any, to the date of the judgment, and a sum for costs, (to be fixed by the masters of the said Superior Courts, or any three of them, subject to the approval of the Judges thereof, or any eight of them, of whom the Lord Chief Justice and the Lord Chief Baron shall be three), unless the plaintiff claim more than such fixed sum, in which case the costs shall be taxed in the ordinary way; and the plaintiff may upon such judgment issue execution at the expiration of eight days from the last day for appearance, and not before: provided always, that it shall be lawful for the Court or a Judge, either before or after final judgment, to let in the defendant to defend upon an application, supported by satisfactory affidavits accounting for the non-appearance, and disclosing a defence upon the merits.

28. In case of such non-appearance, where the writ of summons is not indorsed in the special form hereinbefore provided, it shall and may be lawful for the plaintiff, on filing an affidavit of personal service of the writ of summons, or a Judge's order for leave to proceed under the provisions of this Act, and a copy of the writ of summons, to file a declaration indorsed with a notice to plead in eight days, and to sign judgment by default at the expiration of the time to plead, so indorsed as aforesaid; and in the event of no plea being delivered, where the cause of action mentioned in the declaration is for any of the claims which might have been inserted in the special indorsement on the writ of summons hereinbefore provided, and the amount claimed is indorsed on the writ of summons, the judgment shall be final, and execution may issue for an amount not exceeding the amount indorsed on the writ of summons, with interest at the rate specified, if any, and the sum fixed by the masters for costs, as hereinbefore mentioned, unless the plaintiff claim more, in which case the costs shall be taxed in the ordinary way: provided always, that in such case the plaintiff shall not be entitled to more costs than if he had made such special indorsement, and signed judgment upon non-appearance.

29. The defendant may appear at any time before judgment, and if he appear after the time specified either in the writ of summons, or in any rule or order to proceed as if personal service had been effected, he shall, after notice of such appearance to the plaintiff or his attorney, as the case may be, be in the same position as to pleadings and other proceedings in the action as if he had appeared in time:

provided always, that a defendant appearing after the time appointed by the writ shall not be entitled to any further time for pleading or any other proceeding than if he had appeared within such appointed time.

30. Every appearance by the defendant in person shall give an address, at which it shall be sufficient to leave all pleadings and other proceedings not requiring personal service; and if such address be not given the appearance shall not be received; and if an address so given shall be illusory or fictitious, the appearance shall be irregular, and may be set aside by the Court or a Judge, and the plaintiff may be permitted to proceed by sticking up the proceedings in the Master's Office without further service.

31. The mode of appearance to every such writ of summons, or under the authority of this Act, shall be by delivering a memorandum in writing according to the following form, or to the like effect :

"A., plaintiff, against  
C.D.,

or  
against C.D. and ano-  
ther.

OR  
against C.D. & others.

The defendant *C.D.*  
appears in person.  
*E.F.*, attorney for *C.D.*,  
appears for him.

[If the defendant appears in person here give his address.]

Entered the \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_.

Such memorandum to be delivered to the proper officer or person in that behalf, and to be dated on the day of the delivery thereof.

32. All such proceedings as are mentioned in any writ or notice issued under this Act shall and may be had and taken in default of a defendant's appearance.

33. In any action brought against two or more defendants where the writ of summons is indorsed in the special form hereinbefore provided, if one or more of such defendants only shall appear, and another or others of them shall not appear, it shall and may be lawful for the plaintiff to sign judgment against such defendant or defendants only as shall not have appeared, and, before declaration against the other defendant or defendants, to issue execution thereupon, in which case he shall be taken to have abandoned his action against the defendant or defendants who shall have appeared; or the plaintiff may, before issuing such execution, declare against such defendant or defendants as shall have appeared, stating by way of suggestion, the judgment obtained against the other defendant or defendants who shall not have appeared, in which case the judgment so obtained against the defendant or defendants who shall not have appeared shall operate and take effect in like manner as a judgment by default obtained before the commencement of this Act against one or more of the several defendants in an action of debt before the commencement of this Act.

## JOINDER OF PARTIES.

And with respect to the joinder of parties to actions, be it enacted as follows :

34. It shall and may be lawful for the Court or a Judge, at any time before the trial of any cause, to order that any person or persons, not joined as plaintiff or plaintiffs in such cause, shall be so joined ; or that any person or persons, originally joined as plaintiff or plaintiffs, shall be struck out from such cause, if it shall appear to such Court or Judge that injustice will not be done by such amendment, and that the person or persons, to be added as aforesaid, consent, either in person or by writing, under his, her, or their hands, to be so joined, or that the person or persons, to be struck out as aforesaid, were originally introduced without his, her, or their consent, or that such person or persons consent in manner aforesaid to be so struck out ; and such amendment shall be made upon such terms as to the amendment of the pleadings (if any), postponement of the trial, and otherwise, as the Court or Judge by whom such amendment is made shall think proper ; and when any such amendment shall have been made, the liability of any person or persons, who shall have been added as co-plaintiff or co-plaintiffs, shall, subject to any terms imposed as aforesaid, be the same as if such person or persons had been originally joined in such cause.

35. In case it shall appear at the trial of any action that there has been a misjoinder of plaintiffs or that some person or persons not joined as plaintiff or plaintiffs, ought to have been so joined, and the defendant shall not, at or before the time of pleading, have given notice in writing that he objects to such nonjoinder, specifying therein the name or names of such person or persons, such misjoinder or nonjoinder may be amended, as a variance, at the trial by any Court of Record holding plea in civil actions, and by any Judge sitting at Nisi Prius, or other presiding officer, in like manner as to the mode of amendment, and proceedings consequent thereon, or as near thereto as the circumstances of the case will admit, as in the case of amendments of variances under an Act of Parliament passed in the Session of Parliament, held in the 3 & 4 Wm. 4, c. 42, intituled "An Act for the further Amendment of the Law, and the better Advancement of Justice," if it shall appear to such Court or Judge, or other presiding officer, that such misjoinder or nonjoinder was not for the purpose of obtaining an undue advantage, and that injustice will not be done by such amendment, and that the person or persons, to be added as aforesaid, consent, either in person or by writing, under his, her, or their hands, to be so joined, or that the person or persons, to be struck out as aforesaid, were originally introduced without his, her, or their consent, or that such person or persons consent, in manner aforesaid, to be so struck out; and such amendment shall be made upon such terms as the Court, or Judge, or other presiding officer, by whom such amendment is made, shall think proper; and when any such amendment shall have been made, the liability of any person or persons, who shall have been added as co-plaintiff or co-plaintiffs, shall, sub-



ject to any terms imposed as aforesaid, be the same as if such person or persons had been originally joined in such action.

36. In case such notice be given, or any plea in abatement of nonjoinder of a person or persons as co-plaintiff or co-plaintiffs, in cases where such plea in abatement may be pleaded, be pleaded by the defendant, the plaintiff shall be at liberty, without any order, to amend the writ and other proceedings before plea, by adding the name or names of the person or persons named in such notice or plea in abatement, and to proceed in the action without any further appearance, on payment of the costs of, and occasioned by such amendment only, and in such case, the defendant shall be at liberty to plead *de novo*.

37. It shall and may be lawful for the Court or a Judge in the case of the joinder of too many defendants in any action on contract, at any time before the trial of such cause, to order that the name or names of one or more of such defendants be struck out, if it shall appear to such Court or Judge that injustice will not be done by such amendment; and the amendment shall be made upon such terms as the Court or Judge, by whom such amendment is made, shall think proper; and in case it shall appear at the trial of any action or contract that there has been a misjoinder of defendants, such misjoinder may be amended, as a variance, at the trial, in like manner as the misjoinder of plaintiffs has been hereinbefore directed to be amended, and upon such terms as the Court, or Judge, or other presiding officer, by whom such amendment is made, shall think proper.

38. In any action on contract where the nonjoinder of any person or persons as a co-defendant or co-defendants has been pleaded in abatement, the plaintiff shall be at liberty, without any order, to amend the writ of summons and the declaration, by adding the name or names of the person or persons named in such plea in abatement as joint-contractors, and to serve the amended writ upon the person or persons so named in such plea in abatement, and to proceed against the original defendant or defendants, and the person or persons so named in such plea in abatement: Provided that the date of such amendment shall, as between the person or persons so named in such plea in abatement and the plaintiff, be considered for all purposes as the commencement of the action.

39. In all cases after such plea in abatement and amendment, if it shall appear upon the trial of the action that the person or persons so named in such plea in abatement was or were jointly liable with the original defendant or defendants, the original defendant or defendants shall be entitled as against the plaintiff to the costs of such plea in abatement and amendment; but if at such trial it shall appear that the original defendant or any of the original defendants is or are liable, but that one or more of the persons named in such plea in abatement is or are not liable as a contracting party or parties the plaintiff shall nevertheless be en-

titled to judgment against the other defendant or defendants who shall appear to be liable; and every defendant who is not so liable shall have judgment, and shall be entitled to his costs as against the plaintiff, who shall be allowed the same, together with the costs of the plea in abatement and amendment, as costs in the cause against the original defendant or defendants who shall have so pleaded in abatement the nonjoinder of such person: Provided that any such defendant who shall have so pleaded in abatement shall be at liberty on the trial to adduce evidence of the liability of the defendants named by him in such plea in abatement.

40. In any action brought by a man and his wife for an injury done to the wife, in respect of which she is necessarily joined as co-plaintiff, it shall be lawful for the husband to add thereto claims in his own right, and separate actions brought in respect of such claims may be consolidated, if the Court or a Judge shall think fit: Provided that in the case of the death of either plaintiff such suit, so far only as relates to the causes of action, if any, which do not survive, shall abate.

#### JOINDER OF CAUSES OF ACTION.

And with respect to joinder of causes of action, be it enacted as follows:

41. Causes of action, of whatever kind, provided they be by and against the same parties and in the same rights, may be joined in the same suit; but this shall not extend to replevin or ejectment; and where two or more of the causes of action so joined are local, and arise in different counties, the venue may be laid in either of such counties; but the Court or a Judge shall have power to prevent the trial of different causes of action together, if such trial would be inexpedient, and in such case such Court or Judge may order separate records to be made up, and separate trials to be had.

#### QUESTIONS BY CONSENT WITHOUT PLEADING.

And for the determination of questions raised by consent of the parties without pleading, be it enacted as follows:

42. Where the parties to an action are agreed as to the question or questions of fact to be decided between them, they may, after writ issued, and before judgment, by consent, and order of a Judge (which order any Judge shall have power to make, upon being satisfied that the parties have a *bond fide* interest in the decision of such question or questions, and that the same is or are fit to be tried), proceed to the trial of any question or questions of fact without formal pleadings; and such question or questions may be stated for trial in an issue in the form contained in the Schedule (A.) to this Act annexed, marked No. 6, and such issue may be entered for trial and tried accordingly in the same manner as any issue joined in an ordinary action; and the proceedings in such action and issue shall be under and subject to the ordinary control and jurisdiction of the Court, as in other actions.

43. The parties may, if they think fit, enter into an agreement in writing, which shall not be subject to any stamp duty, and which shall be embodied in the said or any subsequent order, that upon the finding of the jury in the affirmative or negative of such issue or issues, a sum of money fixed by the parties, or to be ascertained by the jury upon a question inserted in the issue for that purpose, shall be paid by one of such parties to the other of them, either with or without the costs of the action.

44. Upon the finding of the jury in any such issue, judgment may be entered for such sum as shall be so agreed or ascertained as aforesaid, with or without costs, as the case may be, and execution may issue upon such judgment forthwith, unless otherwise agreed, or unless the Court or a Judge shall otherwise order for the purpose of giving either party an opportunity for moving to set aside the verdict, or for a new trial.

45. The proceedings upon such issue may be recorded at the instance of either party, and the judgment, whether actually recorded or not, shall have the same effect as any other judgment in a contested action.

46. The parties may, after writ issued, and before judgment, by consent, and order of a Judge, state any question or questions of law in a special case for the opinion of the Court, without any pleadings.

47. The parties may, if they think fit, enter into an agreement in writing, which shall not be subject to any stamp duty, and which shall be embodied in the said or any subsequent order, that upon the judgment of the Court being given in the affirmative or negative of the question or questions of law raised by such special case, a sum of money, fixed by the parties, or to be ascertained by the Court, or in such manner as the Court may direct, shall be paid by one of such parties to the other of them, either with or without costs of the action; and the judgment of the Court may be entered for such sum as shall be so agreed or ascertained, with or without costs, as the case may be, and execution may issue upon such judgment forthwith, unless otherwise agreed, or unless stayed by proceedings in error.

48. In case no agreement shall be entered into as to the costs of such action, the costs shall follow the event, and be recovered by the successful party.

#### PLEADINGS IN GENERAL.

And with respect to the language and form of pleadings in general, be it enacted as follows:

49. All statements which need not be proved, such as the statement of time, quantity, quality, and value, where these are immaterial; the statement of losing and finding, and bailment, in actions for goods on their value; the statement of acts of trespass having been committed with force and arms, and against the peace of our Lady the Queen; the statement of promises which need not be proved, as promises in indebitatus counts, and

mutual promises to perform agreements; and all statements of a like kind, shall be omitted.

50. Either party may object by demurrer to the pleading of the opposite party, on the ground that such pleading does not set forth sufficient ground of action, defence, or reply, as the case may be; and where issue is joined on such demurrer, the Court shall proceed and give judgment according as the very right of the cause and matter in law shall appear unto them, without regarding any imperfection, omission, defect in or lack of form; and no judgment shall be arrested, stayed, or reversed for any such imperfection, omission, defect in or lack of form.

51. No pleading shall be deemed insufficient for any defect which could heretofore only be objected to by special demurrer.

52. If any pleading be so framed as to prejudice, embarrass, or delay the fair trial of the action, the opposite party may apply to the Court or a Judge to strike out or amend such pleading, and the Court or any Judge shall make such order respecting the same, and also respecting the costs of the application, as such Court or Judge shall see fit.

53. Rules to declare, or declare peremptorily, and rules to reply, and plead subsequent pleadings, shall not be necessary, and instead thereof a notice shall be substituted requiring the opposite party to declare, reply, rejoin, or as the case may be, within four days, otherwise judgment, such notice to be delivered separately or indorsed on any pleading to which the opposite party is required to reply, rejoin, or as the case may be.

54. Every declaration and other pleading shall be entitled of the proper Court, and of the day of the month and the year when the same was pleaded, and shall bear no other time or date, and every declaration and other pleading shall also be entered on the record made up for trial and on the judgment roll under the date of the day of the month and year when the same respectively took place, and without reference to any other time or date, unless otherwise specially ordered by the Court or a Judge.

55. It shall not be necessary to make profert of any deed or other document mentioned or relied on in any pleading; and if profert shall be made it shall not entitle the opposite party to craveoyer of or set out uponoyer such deed or other document.

56. A party pleading in answer to any pleading in which any document is mentioned or referred to shall be at liberty to set out the whole or such part thereof as may be material, and the matter so set out shall be deemed and taken to be part of the pleading in which it is set out.

57. It shall be lawful for the plaintiff or defendant in any action to aver performance of conditions precedent generally, and the opposite party shall not deny such averment generally, but shall specify in his pleading the condition or conditions precedent the performance of which he intends to contest.

## DECLARATION.

And with regard to the time and manner of declaring, and to particulars of demand, be it enacted as follows:

58. A plaintiff shall be deemed out of Court, unless he declare within one year after the writ of summons is returnable.

59. Every declaration shall commence as follows, or to the like effect:

[Venue.] "A.B. by E.F., his Attorney [or "in person, as the case may be], sues C.D. "for [here state the cause of action];"

And shall conclude as follows, or to the like effect:

"And the plaintiff claims £ , [or, if "the action is brought to recover specific "goods, the plaintiff claims a return of the "said goods or their value, and £ "for their detention.]"

60. In all cases in which, after a plea in abatement of the nonjoinder of another person as defendant, the plaintiff shall, without having proceeded to trial or an issue thereon, commence another action against the defendant or defendants in the action in which such plea in abatement shall have been pleaded, and the person or persons named in such plea in abatement as joint contractors, or shall amend by adding the omitted defendant or defendants, the commencement of the declaration shall be in the following form, or to the like effect:

[Venue.] "A.B. by E.F., his attorney [or "in his own proper person, &c.], sues "C.D. and G.H., which said C.D. has "heretofore pleaded in abatement the non-"joinder of the said G.H. for," &c.

61. In actions of libel and slander the plaintiff shall be at liberty to aver that the words or matter complained of were used in a defamatory sense, specifying such defamatory sense without any prefatory averment to show how such words or matter were used in that sense, and such averment shall be put in issue by the denial of the alleged libel or slander; and where the words or matter set forth, with or without the alleged meaning, show a cause of action, the declaration shall be sufficient.

## PLEAS AND SUBSEQUENT PLEADINGS.

And as to pleas and subsequent pleadings, be it enacted as follows:

62. No rule to plead or demand of plea shall be necessary, and the notice to plead indorsed on the declaration or delivered separately shall be sufficient.

63. In cases where the defendant is within the jurisdiction, the time for pleading in bar, unless extended by the Court or a Judge, shall be eight days; and a notice requiring the defendant to plead thereto in eight days, otherwise judgment, may, whether the declaration be delivered or filed, be indorsed upon the declaration, or delivered separately.

64. Express colour shall no longer be necessary in any pleading.

65. Special traverses shall not be necessary in any pleading.

66. In a plea or subsequent pleading it shall

not be necessary to use any allegation of *actionem non*, or *actionem ulterius non*, or to the like effect, or any prayer of judgment, nor shall it be necessary in any replication or subsequent pleading, to use any allegation of *proculdum non*, or to the like effect, or any prayer of judgment.

67. No formal defence shall be required in a plea, or avowry, or cognizance, and it shall commence as follows, or to the like effect:

"The defendant by his attorney  
"or in person, or as the case may be,  
"says that [here state first defence]."

and it shall not be necessary to state in a second or other plea, or avowry, or cognizance, that it is pleaded by leave of the Court or a Judge, or according to the form of the Statute, or to that effect; but every such plea, avowry, or cognizance shall be written in a separate paragraph, and numbered, and shall commence as follows, or to the like effect:

"And for a second [&c.] plea the defendant  
"says, that [here state second, &c. de-"fence];"

or if pleaded to part only, then as follows, or to the like effect:

"And for a second [&c.] plea to [stating to  
"what it is pleaded] the defendant says  
"that," &c.

and no formal conclusion shall be necessary to any plea, avowry, cognizance, or subsequent pleading.

68. Any defence arising after the commencement of any action shall be pleaded according to the fact, without any formal commencement or conclusion; and any plea which does not state whether the defence therein set up arose before or after action shall be deemed to be a plea of matter arising before action.

69. In cases in which a plea *puis darrein continuance* has heretofore been pleadable in Banc or at Nisi Prius, the same defence may be pleaded, with an allegation that the matter arose after the last pleading; and such plea may, when necessary, be pleaded at Nisi Prius, between the 10th of August and 24th of October; but no such plea shall be allowed unless accompanied by an affidavit that the matter thereof arose within eight days next before the pleading of such plea, or unless the Court or a Judge shall otherwise order.

70. It shall be lawful for the defendant in all actions, (except actions for assault and battery, false imprisonment, libel, slander, malicious arrest or prosecution, criminal conversation, or debauching of the plaintiff's daughter or servant,) and, by leave of the Court or a Judge, upon such terms as they or he may think fit, for one or more of several defendants to pay into Court a sum of money by way of compensation or amends: Provided that nothing herein contained shall be taken to affect the provisions of a certain Act of Parliament passed in the Session of Parliament holden in the 6 & 7 Vict., intitled "An Act to amend the Law respecting Defamatory Words and Libel."

71. When money is paid into Court, such

payment shall be pleaded in all cases, as near as may be, in the following form, *mutatis mutandis* :

"The defendant by \_\_\_\_\_ his attorney  
 " [or in person, &c.] [if pleaded to part  
 " say, as to £ \_\_\_\_\_, parcel of the money  
 " claimed], brings into Court the sum of  
 " £ \_\_\_\_\_, and says that the said sum  
 " is enough to satisfy the claim of the  
 " plaintiff in respect of the matter herein  
 " pleaded to."

72. No rule or Judge's order to pay money into Court shall be necessary, except in the case of one or more of several defendants, but the money shall be paid to the proper officer of each Court, who shall give a receipt for the amount in the margin of the plea, and the said sum shall be paid out to the plaintiff or to his attorney, upon a written authority from the plaintiff, on demand.

73. The plaintiff, after the delivery of a plea of payment of money into Court, shall be at liberty to reply to the same by accepting the sum so paid into Court in full satisfaction and discharge of the cause of action in respect of which it has been paid in, and he shall be at liberty in that case to tax his costs of suit, and, in case of nonpayment thereof within 48 hours, to sign judgment for his costs of suit so taxed, or the plaintiff may reply that the sum paid into Court is not enough to satisfy the claim of the plaintiff in respect of the matter to which the plea is pleaded; and, in the event of an issue thereon being found for the defendant, the defendant shall be entitled to judgment and his costs of suit.

74. Whereas certain causes of action may be considered to partake of the character both of breaches of contract and of wrongs, and doubts may arise as to the form of pleas in such actions, and it is expedient to preclude such doubts: any plea, which shall be good in substance, shall not be objectionable on the ground of its treating the declaration either as framed for a breach of contract, or for a wrong.

75. Pleas of payment and set-off, and all other pleadings capable of being construed distributively, shall be taken distributively, and if issue is taken thereon, and so much thereof as shall be sufficient answer to part of the causes of action proved shall be found true by the jury, a verdict shall pass for the defendant in respect of so much of the causes of action as shall be answered, and for the plaintiff in respect of so much of the causes of action as shall not be so answered.

76. A defendant may either traverse generally such of the facts contained in the declaration as might have been denied by one plea, or may select and traverse separately any material allegation in the declaration, although it might have been included in a general traverse.

77. A plaintiff shall be at liberty to traverse the whole of any plea or subsequent pleading of the defendant by a general denial, or, admitting some part or parts thereof, to deny all the rest, or to deny any one or more allegations.

78. A defendant shall be at liberty in like manner to deny the whole or part of a replication or subsequent pleading of the plaintiff.

79. Either party may plead, in answer to the plea or subsequent pleading of his adversary, that he joins issue thereon, which joinder of issue may be as follows, or to the like effect:

"The plaintiff joins issue upon the defendant's 1st [&c., specifying what or what part] plea."

"The defendant joins issue upon the plaintiff's replication to the 1st [&c., specifying what] plea;"

and such form of joinder of issue shall be deemed to be a denial of the substance of the plea or other subsequent pleading, and an issue thereon; and in all cases where the plaintiff's pleadings is in denial of the pleading of the defendant, or some part of it, the plaintiff may add a joinder of issue for the defendant.

80. Either party may, by leave of the Court or a Judge, plead and demur to the same pleading at the same time, upon an affidavit by such party, or his attorney, if required by the Court or Judge, to the effect that he is advised and believes that he has just ground to traverse the several matters proposed to be traversed by him, and that the several matters sought to be pleaded as aforesaid by way of confession and avoidances are respectively true in substance and in fact, and that he is further advised and believes that the objections raised by such demurrer are good and valid objections in law, and it shall be in the discretion of the Court or a Judge to direct which issue shall be first disposed of.

81. The plaintiff in any action may, by leave of the Court or a Judge, plead in answer to the plea, or the subsequent pleading of the defendant, as many several matters as he shall think necessary to sustain his action; and the defendant in any action may, by leave of the Court or a Judge, plead in answer to the declaration or other subsequent pleading of the plaintiff, as many several matters as he shall think necessary for his defence, upon an affidavit of the party making such application, or his attorney, if required by the Court or Judge, to the effect that he is advised and believes that he has just ground to traverse the several matters proposed to be traversed by him, and that the several matters sought to be pleaded as aforesaid by way of confession and avoidance are respectively true in substance and in fact; provided that the costs of any issue, either of fact or law, shall follow the finding or judgment upon such issue, and be adjudged to the successful party, whatever may be the result of the other issue or issues.

82. No rule of Court for leave to plead several matters shall be necessary where a Judge's order has been made for the same purpose.

83. All objections to the pleading of several pleas, replications, or subsequent pleadings, or several avowries or cognizances, on the ground that they are founded on the same ground of answer or defence, shall be heard upon the summons to plead several matters.

84. The following pleas, or any two or more of them, may be pleaded together as of course, without leave of the Court or a Judge; that is to say, a plea denying any contract or debt alleged in the declaration; a plea of tender as to part; a plea of the statute of limitations, set-off, bankruptcy of the defendant, discharge under an Insolvent Act, *plene administravit*, *plene administravit præter*, infancy, coverture, payment, accord and satisfaction, release, not guilty, a denial that the property an injury to which is complained of is the plaintiff's, leave and licence, *son assault demesne*, and any other pleas which the Judges of the said Superior Courts, or any eight or more of them, of whom the Chief Judges of the said Courts shall be three, shall by any rule or order, to be from time to time by them made in term or vacation, order or direct.

85. The signature of counsel shall not be required to any pleading.

86. Except in the cases herein specifically provided for, if either party plead several pleas, replications, avowries, cognizances, or other pleadings, without leave of the Court or a Judge, the opposite party shall be at liberty to sign judgment; provided that such judgment may be set aside by the Court or a Judge, upon an affidavit of merits, and such terms as to costs and otherwise as they or he may think fit.

87. One new assignment only shall be pleaded to any number of pleas to the same cause of action; and such new assignment shall be consistent with and confined by the particulars delivered in the action, if any, and shall state that the plaintiff proceeds for causes of action different from all those which the pleas profess to justify, or for an excess over and above what all the defences set up in such pleas justify, or both.

88. No plea, which has already been pleaded to the declaration, shall be pleaded to such new assignment, except a plea in denial, unless by leave of the Court or a Judge; and such leave shall only be granted upon satisfactory proof that the repetition of such plea is essential to a trial on the merits.

89. The form of a demurrer, except in the cases herein specifically provided for, shall be as follows, or to the like effect:

"The defendant, by his attorney [or, in person, &c., or, plaintiff] says, that the declaration [or plea, &c.] is bad in substance;"

and in the margin thereof some substantial matter of law intended to be argued shall be stated; and if any demurrer shall be delivered without such statement, or with a frivolous statement, it may be set aside by the Court or a Judge, and leave may be given to sign judgment as for want of a plea; and the form of a joinder in demurrer shall be as follows, or to the like effect:

"The plaintiff [or, defendant] says that the declaration [or, plea, &c.,] is good in substance."

90. Where an amendment of any pleading

is allowed, no new notice to plead thereto shall be necessary; but the opposite party shall be bound to plead to the amended pleading within the time specified in the original notice to plead, or within two days after amendment, whichever shall last expire, unless otherwise ordered by the Court or a Judge; and in case the amended pleading has been pleaded to before amendment, and is not pleaded to *de novo* within two days after amendment, or within such other time as the Court or a Judge shall allow, the pleadings originally pleaded thereto shall stand and be considered as pleaded in answer to such amended pleading.

#### EXAMPLES OF PLEADINGS.

And whereas it is desirable that examples should be given of the statements of causes of action, and of forms of pleading: be it enacted as follows:

91. The forms contained in the schedule (B.) to this Act annexed shall be sufficient, and those and the like forms may be used, with such modifications as may be necessary to meet the facts of the case; but nothing herein contained shall render it erroneous or irregular to depart from the letter of such forms, so long as the substance is expressed without prolixity.

#### JUDGMENT BY DEFAULT AND ASCERTAINING AMOUNT.

And with respect to judgment by default, and the mode of ascertaining the amount to be recovered thereupon, be it enacted as follows:

92. No rule to compute shall be necessary or used; but nothing in this Act contained shall invalidate any proceedings already taken or to be taken by reason of any rule to compute made, or applied for, before the commencement of this Act.

93. In actions where the plaintiff seeks to recover a debt or liquidated demand in money, judgment by default shall be final.

94. In actions in which it shall appear to the Court or a Judge that the amount of damages sought to be recovered by the plaintiff is substantially a matter of calculation, it shall not be necessary to issue a writ of inquiry, but the Court or a Judge may direct that the amount, for which final judgment is to be signed, shall be ascertained by one of the Masters of the said Court; and the attendance of witnesses and the production of documents before such Master may be compelled by subpoena, in the same manner as before a jury upon a writ of inquiry; and it shall be lawful for such Master to adjourn the inquiry from time to time, as occasion may require; and the Master shall indorse upon the rule or order for referring the amount of damages to him, the amount found by him, and shall deliver the rule or order, with such indorsement, to the plaintiff; and such and the like proceedings may thereupon be had as to taxation of costs, signing judgment, and otherwise, as upon the finding of a jury upon a writ of inquiry.

95. In all actions where the plaintiff recovers a sum of money, the amount to which he is entitled may be awarded to him by the judgment generally, without any distinction being therein made as to whether such sum is recovered by way of a debt or damages.

96. Nothing in this Act contained shall in any way affect the provisions of a certain Act of Parliament passed in the Session of Parliament holden in the 8 & 9 Wm. 3, intituled "An Act for the better preventing frivolous and vexatious Suits," as to the assignment or suggestion of breaches, or as to judgment for a penalty as a security for damages in respect of further breaches.

¶ *To be continued.*]

## LAW OF EVIDENCE.

### ACTION OF SLANDER.—SPECIAL DAMAGE.

IN an action for slander,<sup>1</sup> the declaration stated, that the defendant spoke the following words of the plaintiff, "You had better get your dark lantern, and go to old Hollingworth's pantry, and take a rhubarb pie as you did before." The declaration stated, as special damage, that a person named Carpmole would not employ the plaintiff. Plea: Not guilty.

It appeared that the plaintiff and defendant, and a person named Hollingworth, were together in a field, Carpmole being at some distance, when the defendant spoke the words to the plaintiff in the hearing of Hollingworth, but Carpmole did not hear what was said, but only heard Hollingworth's name mentioned, but on his asking Hollingworth what it was, he told him, and on the plaintiff's afterwards asking Carpmole to employ him, Carpmole replied, "I don't think I dare employ you, as it is said that you rob pantries;" and Carpmole stated that for that reason he would not employ the plaintiff.

*Patteson, J.*—"The authority of Lord Chief Justice *Tindal*, in the case of *Rutherford v. Evans*, 4 C. & P. 79, is express, that it is to be confined to the persons who heard the words spoken by the defendant, and upon that authority I shall act, and strike out this evidence of the special damage."

In that case, to prove special damage, several witnesses were called, one of whom stated that, in consequence of reports which he had heard, he refused to give the plaintiff credit. *Taddy*, Serjeant, objected that the reports must be traced to the defendant. *Wilde*, Serjeant, contended that it was not necessary, as the greatest mischief might be done by reports set afloat by the defendant, and propagated by

others. Lord Chief Justice *Tindal* thought that the plaintiff must confine himself to the evidence of persons who had the statement from the defendant himself.

## EXAMINATION OF ARTICLED CLERKS.

### THE NEW STATUTES AND ORDERS.

To the Editor of the *Legal Observer*.

SIR,—Observing in your Journal of the 14th August, page 301, your obliging reply to the inquiry of a correspondent on the subject of the ensuing "Examination of Articled Clerks," allow me to ask,—If the course you mention be the probable practice of the Examiners at the next Michaelmas Examination, what plan are they likely to pursue in the following *Hilary Term*? It is true, that by that time the Rules and Orders (of the Lord Chancellor, for instance), may not only have been issued, and perhaps confirmed by Parliament, but even partially acted upon; but this, I presume, is as much as they will, and I think I understand you to say that "the practice of the Examiners has been, not to examine on *New Statutes and Orders* of Court until they have been some time in operation."

Again,—The Lectures to be delivered shortly by Messrs. R. C. Garth and J. C. Conybeare, in the Hall of the Incorporated Law Society, will undoubtedly be (I presume so at least), for the greater part, on the Acts of the late Session and the alterations in the Law consequent thereupon, as was the case in the last courses of 1851-52. Where, then, will be the utility of myself and others, who intend to apply for examination next *Hilary Term*, attending these valuable Lectures on the "New Law," if our Examination Questions are to be on the "Old Practice?" And how very contrary to good policy it seems to compel us to employ the few remaining months of our articles in "working up" that Law which, on our emancipation, we shall find to be null and void. And, so far from having become by our studies for the Examination "fit and capable to act as attorneys of the said Courts," we shall require to unlearn all we know, and return to our study, before we dare take a single step in any proceedings, either legal or equitable. Surely, the wisdom of the learned gentlemen, the Examiners, will never sanction such a state of things.

### AN ARTICLED CLERK.

[We think the Examiners will not put any Questions on such parts of the Law and Practice as have been abolished; but it may be reasonably expected that in *Hilary Term* some Questions will be propounded at the Examination bearing on the alterations that will come into effect in Michaelmas Term. It should also be recollected that the former practice will govern all questions that arise on matters up to the time that the New Orders come into operation.—ED.]

<sup>1</sup> *Tennicliffe v. Moss*, 3 C. & K. 83.

## COUNTY COURT COSTS.

## PROPOSED SCALE OF ATTORNEYS' CHARGES.

THE Lord Chancellor having, under the provisions of the County Courts Acts Amendments Act of last Session, appointed Mr. Serjeant Manning, Mr. Koe, Mr. Serjeant Dowling, Mr. Walker, and Mr. Furner, being five of the Judges of the County Courts, to frame a Scale of Costs and Charges to be paid to Attorneys in the County Courts, to be allowed as between Attorney and Client, and as between party and party, Mr. Nicol, the Secretary

of the Judges so appointed, has requested the members of the several Law Societies to communicate any suggestions they may wish to make, with reference to the powers conferred on the Judges by the Lord Chancellor's appointment.

The following proposed scale, which was adopted at a General Meeting of the Attorneys of Sheffield, held on the 30th September, 1850, may properly be laid before our readers for their consideration on the present occasion; and we shall be glad to receive any suggestions from practitioners who are in the habit of appearing, or willing to practise, in the County Courts.

|                                                                                                               | Claim<br>under £20. | Claim<br>£20<br>and under £25. | Claim<br>£25 to £50. |
|---------------------------------------------------------------------------------------------------------------|---------------------|--------------------------------|----------------------|
| <i>General Costs.</i>                                                                                         |                     |                                |                      |
| Letter before action . . . . .                                                                                | £. s. d.<br>0 2 0   | £. s. d.<br>0 3 6              | £. s. d.<br>0 3 6    |
| Application for summons out of district . . . . .                                                             | 0 3 4               | 0 6 8                          | 0 10 0               |
| Instructions for drawing, and attending to enter plaint . . . . .                                             | 0 3 4               | 0 6 8                          | 0 10 0               |
| Drawing and two copies of particulars of demand, if under three folios . . . . .                              | 0 2 0               | 0 3 0                          | 0 5 0                |
| If above three folios, per additional folio extra . . . . .                                                   | 0 0 4               | 0 0 4                          | 0 0 4                |
| Attending searching whether summons served, also plaintiff thereon . . . . .                                  | 0 1 8               | 0 3 4                          | 0 6 8                |
| Attending bespeaking subpoenas . . . . .                                                                      | 0 1 8               | 0 3 4                          | 0 6 8                |
| Notice of intention to appear by attorney, copies and service . . . . .                                       | 0 1 0               | 0 2 0                          | 0 3 0                |
| Notice of trial by jury, copies and service . . . . .                                                         | 0 1 0               | 0 2 0                          | 0 3 0                |
| Notice to produce, copy and service . . . . .                                                                 | 0 1 0               | 0 2 0                          | 0 3 0                |
| Examining witnesses, or minutes of evidence . . . . .                                                         | 0 3 4               | 0 6 8                          | 0 10 0               |
| Attending Court on trial . . . . .                                                                            | 0 15 0              | 1 10 0                         | 2 0 0                |
| Attending every adjourned hearing . . . . .                                                                   | 0 7 6               | 0 15 0                         | 1 0 0                |
| Attending plaintiff on part of demand being paid into Court, and advising thereon . . . . .                   | 0 1 8               | 0 3 4                          | 0 6 8                |
| Attending searching books, receiving money out of Court or bespeaking execution . . . . .                     | 0 1 8               | 0 3 4                          | 0 6 8                |
| Other attendances, when necessary, each . . . . .                                                             | 0 1 8               | 0 3 4                          | 0 6 8                |
| <i>Where Counsel Employed.</i>                                                                                |                     |                                |                      |
| Instructions for Brief . . . . .                                                                              | 0 1 8               | 0 3 4                          | 0 6 8                |
| Copy summons to annex to brief . . . . .                                                                      | 0 1 0               | 0 2 0                          | 0 3 0                |
| Drawing brief and fair copy, per sheet . . . . .                                                              | 0 10 0              | 0 10 0                         | 0 10 0               |
| Attending Counsel . . . . .                                                                                   | 0 1 8               | 0 3 4                          | 0 6 8                |
| Attending consultation . . . . .                                                                              | 0 3 4               | 0 6 8                          | 0 10 0               |
| Attending Court on trial and on every adjourned hearing, each . . . . .                                       | 0 10 0              | 0 15 0                         | 1 1 0                |
| <i>Confessions and Statements.</i>                                                                            |                     |                                |                      |
| Instructions for and drawing confession and fair copy without terms. Sect. 8, c. 61 (13 & 14 Vict.) . . . . . | 0 3 4               | 0 6 8                          | 0 10 0               |
| The like with terms, sect. 9 . . . . .                                                                        | 0 5 0               | 0 10 0                         | 0 15 0               |
| Affidavit with signature and oath . . . . .                                                                   | 0 3 0               | 0 5 0                          | 0 7 6                |
| Attending Court or Clerk therewith . . . . .                                                                  | 0 1 8               | 0 3 4                          | 0 6 8                |

Charges in *Recovery of Tenements, Replevin, Interpleader, and Trials by Consent*, will be adapted to the requirements of each special case, as well as to the case of a defendant.

Charges for journeys to distant Courts are left to the discretion of the Taxing Officer.

## UNITED LAW CLERKS' SOCIETY.

THE Twentieth Anniversary Festival of this Society took place on Wednesday the 16th June last, at the Freemasons' Tavern. About 350 gentlemen sat down to dinner. *The Right Honourable Sir John Jervis, Lord Chief Justice of the Court of Common Pleas*, presided, and was supported by the Right Honourable Sir John Patteson, Dr. Harding (the Queen's Advocate), Mr. Campbell (the Accountant in Bankruptcy), Mr. E. Beavan, Mr. Bramwall, Q. C., Mr. Sergeant Byles, Mr. J. H. Christie, Mr. Davison, Mr. Dowse, Mr. W. Forsyth, Mr. Horn, Mr. Jervis (Marshal of the Common Pleas), Mr. C. Milward, Mr. W. Rogers, Dr. Spinks, Mr. Steere, Mr. Welsby, Mr. Wilcock, Q. C., Mr. Bayford, Mr. J. Bird, Mr. Boyes, Mr. Burton, Mr. Chandler, Mr. Coulthard, Mr. G. Cox, Mr. Foord, Mr. Freeman, Mr. Goode, Mr. C. G. Jones, Mr. W. Jones, Mr. Lee, Mr. Lewis, Mr. Masterton, Mr. Mills, Mr. J. R. Naylor, Mr. Philipe, Mr. Raw, Mr. Robinson, Mr. J. Rogers, Mr. Rose, Mr. Scurlock, Mr. Smith, Mr. Thompson, Mr. B. Turner, Mr. J. Turner, Mr. Tweedie, Mr. Young, Mr. Williamson, and very many other members of each branch of the Profession.

The usual loyal toasts were drunk with the most enthusiastic loyalty.

The Secretary (Mr. Rogers), having read the Annual Report—

The *Chairman* then rose, and said, that before he proposed the toast with which he should conclude, he must be permitted to congratulate them upon the Report which they had just heard read. It was a Report of which they might justly be proud; it presented topics of a most interesting description. It was indeed a proud moment for the law when it could assemble together so many gentlemen from every branch and department of the Profession upon such a benevolent occasion, and when it could collect for this excellent purpose a sum exceeding 14,000*l*. If it was desirable to speak at length in its favour, no topic could be used which presented so many circumstances for congratulation as that. It showed that they were thrifty, that they were desirous in the first instance to provide for the protection and support of their families hereafter, and in the next place, to be generous and benevolent in aiding their suffering brethren. But it was also a subject of congratulation that so large a portion of this accumulation had been subscribed by those who were employed as clerks. The fact spoke volumes for their integrity, and showed that their employers might justly repose the greatest confidence in them. It was honourable to them as law clerks, and showed that they were deserving of the patronage they had obtained, and it was no less honourable to their patrons that they so generously bestowed it. The result of their liberal support naturally had led to an accumulation of their stock, but they must not let that influence those who might be anxious to contribute hereafter. As

they progressed, their members would feel the increasing infirmities of age which would call largely for an increase of their funds. His Lordship assured them that it was to him a source of the highest satisfaction, while he was presiding there (and thereby doing but his duty), to find that so many whom he had met so often in his former pursuits in life were members of that Society, and were doing their best to support others in the time of their necessity, as well as laying up a store for themselves thereafter. He was happy to find that that good conduct which he had always observed amongst the law clerks generally had not been incorrectly estimated by him, but was justly appreciated by their superiors who had generously come forward to give them the countenance of their support, and liberally to contribute to the increase of their funds. He could not but feel that the branch of the Profession to which he then addressed himself, might, to a certain extent, be temporarily suffering, with other branches of the Profession, from what was then going on with respect to the improvement of the law. He adverted to the circumstance solely for the purpose of impressing upon them the truth that in this state of transition it was their bounden duty towards the superiors whom they served, so to conduct themselves honestly and straightforwardly like high-minded gentlemen, as to justify no observation to their disparagement, and that though they might be temporarily inconvenienced by the change, they would, by pursuing an honest, liberal, and open course, refute the slanders of their opponents, and ultimately achieve that which he was certain would follow their good example, the triumph of the Profession, and the means of obtaining an honest and liberal livelihood. And when he spoke upon this subject, he did so as the result of deep consideration. It had been his duty to take part in those changes, but he had too much confidence in the honour of those engaged in the Profession, and especially in the integrity of those who were members of that Society, to doubt that for a moment self-interest would allow them to swerve from that path of duty which alone could entitle them all (as happily it was open to them all as we had had some splendid examples), to rise from that branch of the Profession to which they so honourably belonged, even to become the highest and most distinguished men upon the judicial bench. It was the proud boast of this country, that often the highest person in the realm next to the Sovereign had risen even from the lowest branch of the Profession. That path of honour was open to them all, but the prize is to be obtained only by industry, by the honest pursuit of their Profession, by sedulous attention to their duties, and should any of them achieve that honour, as he trusted some of them might, they would then be enabled with honest pride to revert, as he had heard my Lord Truro do, with exultation to his origin, and refer to it as the reward which they might all attain by strict integrity, and



the honest pursuit of their Profession. With such a brilliant example before them, with such mutual support, with such encouragement to perseverance, could they hesitate what course to take? Could they doubt about pursuing an honourable upright and laudably ambitious course, and not that which some persons, not knowing the Profession, stigmatise as a mere desire for gain? He was sure they would adopt the former. He was certain, as they had begun so well, they would justify the confidence which had been placed in them, by persevering in the course they had hitherto taken. His Lordship concluded by proposing "*Prosperity to the United Law Clerks' Society*."

The Secretary then announced the list of subscriptions.

Mr. Serjeant Byles proposed the health of "*The Lord Chancellor and the other patrons of the Society*." The learned Serjeant stated that most of those who were patrons of the Society considered it their highest distinction to belong to that famous Profession of which they were all members, and he then perhaps was speaking in the presence of some who might hereafter rise to the highest posts in the realm, and have their healths proposed in a toast like that when he had then the honour to submit for their acceptance.

The Right Honourable Sir John Patteson (who upon rising was received with the most enthusiastic and prolonged applause) responded to the toast. The Right Honourable Gentleman stated, that by virtue of his seniority in age, and because their excellent Chairman, who was his senior in rank was Chairman, he was called upon, and it was but his duty to obey—to return thanks to them for the toast which had been proposed by his Brother Byles, and which had been received so cordially by them, he meant the health of the Lord Chancellor and the other patrons of the Society—it would ill become him, and he certainly did not propose doing so, to enter at large into any of the benefits of the Society, because that had been already done by his excellent friend, their Chairman, in a manner which he was sure if any person were to attempt to follow him into the same subject, would put that person most terribly in the shade. He did not think it at all necessary or right to take that course, but this he trusted he might be allowed to say, without treading in his steps, that they all ought to be very much obliged to those very benevolent and kind gentlemen who he thought twenty years ago, in the year 1832, proposed the formation of the Society. He believed that many of them still living were delighted indeed that the anticipations they then indulged in as to the benefits which would result from such an Institution had been so completely realised, it could but be in the ordinary course of events, as Providence had directed the world, that a great many of the law clerks, members of the Society, notwithstanding their utmost endeavours and their most strenuous exertions in the

state of the law in which they were placed, might be overtaken by illness, quite unexpectedly, attended by pecuniary suffering, or might be taken away by sudden death, and leave families unprovided for. Therefore, it was a very excellent thing to establish the Society, and a very kind and benevolent act in those who originated it for the purpose of providing a fund which should relieve either those who were distressed by illness, or the families of those who were suddenly removed by death. Those who were blessed by Providence with longer life and ample pecuniary means, should cheerfully contribute to the extent of their ability to the support of those who had been visited by affliction and poverty. That such assistance was frequently needed, even by most deserving law clerks, he could from a long experience of the Profession testify. He was then sixty years of age. He had been thirty-six years in the practice of the law, after he had passed his time as a pupil. Of that time he was somewhat less than fifteen years a special pleader and barrister, and something more than twenty-one years a Judge. In the course of that time he had necessarily had much intercourse with law clerks and attorneys practising in London and also upon the Circuit, but more particularly with those in London; and he must say he had found them, with but very few exceptions indeed, an able and attentive body of men, conducting their business fairly and honourably in a manner to do themselves and the Profession to which they belonged the highest credit. Having, also, for twenty-one years had them constantly attending before him at Chambers on summonses, he had had abundant opportunity of observing the manner in which the clerks and attorneys practising in London conduct themselves and their business, and he was quite sure that he did not go beyond the truth in saying that they were indeed well deserving any assistance which those who could afford to give it might be disposed to render. It was a great subject of regret to him personally that he was no longer able to hear them at those Chambers;—perhaps he should have said *see* them, because hearing was with him a matter of some considerable difficulty. It was that physical defect which had driven him away from the situation which he had hitherto held; although he was not turned out of the Profession, because her Majesty had been kind enough to admit him to the office of Privy Councillor, therefore he was not turned out of that Profession, for he really did not know what he should do if he were. He would have been happy if it had pleased Providence to have allowed him to continue a little longer in the same situation, and to have held that same pleasant intercourse with them to which he had referred. However, that was a matter of which he had no right, reason, wish, or thought to complain. He was thankful that he had enjoyed it so long. He feared he continued too long for usefulness. The other patrons of the Society, whose health they had

been kind enough to drink, would, he was sure, agree with him that this was a Society of great importance to a Profession which was for the public good, for without a good Profession of the Law,—without good barristers, attorneys, and attorneys' clerks, where would the administration of Justice in this country be? He thanked them for himself and the other Patrons of the Society, for the honour they had conferred upon them.

Mr. Bramwell, Q. C., said, he had the honour to propose to them a toast. They had the authority of their Chairman for saying that those present were all members of one Profession. From their distinguished Chairman down to the humblest object of their bounty, they were all members of the Profession of the Law. Gentlemen might follow it with different fortunes. Some of them attained high distinction and wealth, whilst others, either because nature had denied them the means or fortune had never given them the opportunity, were in a very different position in this world, but they were all fellow-labourers. Not only had they the authority of the Lord Chief Justice, but they had the authority of Sir John Patteson, for saying that the most eminent man in his own Profession was indebted in part to the law clerks for his success and prosperity. They might have a distinguished leader at Nisi Prius and a talented arguer of law cases in the Courts, but he had to thank the industry of those who had gone before him—ay, he had to thank the plodding of these hard-working clerks in part for having made him so famous, and he assured them that that was not forgotten by a kind and generous heart. The man of talent was generally—he would not say always—a man of kind and generous heart. They might see him at an early age attain the foremost ranks of his Profession—they might see him made Attorney-General—they might see him exercising that high Profession with a success which was perfectly marvellous, as though there was some species of favour of Providence that in some way or other attended him in Court—they might see him the most merciful administrator of the law that ever filled his situation towards those whose crimes had compelled him to bring them into Court—they might see him ultimately attaining the high distinction of Lord Chief Justice of the Common Pleas, and through every grade of his professional career they would find that he had never forgotten his old fellow-labourers the law clerks. Here to-day they found him at this meeting animating by his presence, and language which would animate anybody, the law clerks to strive to distinguish themselves in their Profession and to provide for the necessities of their body, encouraging their hearts, and offering them an example of how they might attain by persevering industry and good conduct the highest rank in that Profession. It was not necessary for him to pass, or attempt to pass, any eulogy upon their Chairman, either with reference to his public qualities or his private

virtues. He believed they knew them to a certain extent, although he did not think they knew them so fully as he did. He might take this opportunity of proposing his health to say, that a man more kindly disposed towards the members of the Society,—one who felt more anxious for the prosperity of their Profession and that its members should be wealthy, prosperous, and dignified, he firmly believed never existed than the Lord Chief Justice of the Common Pleas. He should do wrong if he added another word to what he had said. He called upon them, and he knew he could not make the appeal to any assembly which would respond to it more cheerfully, to drink the health of their distinguished Chairman—the Lord Chief Justice of the Common Pleas.

[To be continued.]

## NOTES ON THE CIRCUIT.

### JUDICIAL ACCIDENTS.

As Mr. Baron Platt was on his way to Wells from Bridgewater, for the purpose of opening the late Assize Commission, the axle of the carriage broke before he had proceeded far from the latter place. Mr. William Fry, a respectable gentleman of Wells, happened to be passing, en route for Wells, and seeing the very slow pace the carriage was proceeding, the following dialogue took place:—Mr. W. Fry: Sir, you are proceeding at a very slow pace. Baron Platt—Yes; there's an accident with the carriage. Are you bound for Wells? Mr. Fry—Yes, sir. Baron Platt—Will you take a letter to the sheriff for me? Mr. Fry—Yes, or a verbal message; and more than that, either of you are welcome to part of my gig, provided you have no luggage. Baron Platt—You are a good sort of a fellow, and I will accept your kind offer; the only luggage that I have got is my wig and gown. (Here Mr. Fry began to find out to whom he had been discoursing so freely, and apologised for not having used that courtesy which was due to the learned Baron). Baron Platt, then accompanied by Mr. Fry, discoursing very good-humouredly and pleasantly until arriving at Glastonbury, when a carriage and four was ordered to take his lordship to Wells, where the sheriff's *cortège* had been waiting a considerable time to escort him to the Town Hall. Upon the Town Council waiting, as usual, upon the Judge at his lodgings to present an address to him, Mr. Fry was recognised by the learned Baron, and thanked for his kindness.—*Bath Chronicle*.

Some years ago, another Baron, Mr. B. Graham, was not so fortunate,—he got out of his carriage whilst it was going slowly up a hill on the Western Circuit—he walked forward until he unfortunately came to a place where two roads met, he took the wrong road, and walked away for several miles; the carriage went the right way, but no Judge was to be seen; at last they went along the other road, and met the Baron not a little fatigued.

## RECENT DECISIONS IN THE SUPERIOR COURTS. AND SHORT NOTES OF CASES.

### Lord Chancellor.

*Scrivenor v. Smith.* July 16, 17, 1852.

**WILL.—CONSTRUCTION.—BEQUEST.—ABSO-  
LUTE OR FOR LIFE.**

A testator, by his will, after giving life interests to his wife and eldest daughter, directed upon their deaths the property to be sold and the proceeds invested in land upon trust for his son in strict settlement, and by his codicil he directed that, in consequence of the death of his eldest daughter, the interest of his property in the Government funds (of which his estate in part consisted) should be paid to his wife for life, and at her death he gave one-half to his son, and the remaining half to be equally divided between his two daughters, "and at their death such shares to be equally divided among their children respectively." Held, reversing the decision of Vice-Chancellor Lord Cranworth, that the son was entitled to a moiety of the sum invested in the Government funds, and not to a life interest only.

THE testator, General Fust, by his will, dated in February, 1849, directed his real and personal property to be converted and the produce invested, and the interest to be paid as therein mentioned to his eldest daughter and his wife for life, and after the death of the survivor the trustees were empowered to sell and invest the proceeds in the purchase of land and hold the same in trust for his son in strict settlement. In March, 1849, the testator made a codicil and directed, in consequence of the death of his eldest daughter, that the interest of his property in the Government funds of Calcutta, which composed part of his estate, should be paid to his wife for life, and at her death he gave one-half of the said property to his son, and the remaining half to be equally divided between the testator's other two daughters, "and at their death such shares to be equally divided among their children respectively." The Vice-Chancellor Lord Cranworth having held that the son only took a life interest in the moiety, and that the disposition upon their deaths applied to the son as well as to the daughters, this appeal was presented.

*Cur. ad. vult.*

The Lord Chancellor said, that the testator intended his son should take absolutely, and the decision of the Court below was therefore reversed,—costs to be paid out of the fund.

### Lords Justices.

*Nelson v. Strangham.* August 5, 1852.

**ADMINISTRATION SUIT.—TRANSFER OF CONTRIBUTORY'S ESTATE TO OFFICIAL MANAGER OF BANKING COMPANY.**

An order was made, on the petition of the official manager, in a suit for the administration of the estate of a shareholder in a banking company directed to be wound up, and to which the executors were held liable as contributories, for the transfer to the official manager of the estate, there being no other creditors.

THIS was a petition on behalf of the official manager of the North of England Joint Stock Banking Company in this suit for the administration of the estate of Mr. Straffon, whose executors had been placed on the list of contributories to the company, which had been directed to be wound up, for the transfer to him of the estate, there being no other creditor.

J. V. Prior in support; Hallett, H. Clarke, Bates, W. D. Lewis, and Brodrick for other parties, did not oppose.

The Lords Justices made the order as prayed.

### Master of the Rolls.

*Ellis v. Elliott.* July 13, 19, 1852.

**CLAIM.—PAYMENT OF LEGACY.—DEED OF ASSIGNMENT.—FORGING SIGNATURES.—ISSUE AT LAW.**

In defence to a claim for the payment of a legacy, a deed of assignment of the legacy was set up, but the plaintiff contended it was a forgery. Witnesses were examined *viva voce* on the hearing, and the Court decreed for payment of the legacy, without directing an issue at law,—the amount of the legacy being small.

THIS claim was filed by the plaintiff to recover the amount of a legacy to which his wife was entitled under the will of Mr. Joseph Elliott, upon the death of her mother. The defendant set up a deed of assignment of the legacy, dated in November, 1822, to himself, from the plaintiff and his wife, in consideration of 140*l.*, but the plaintiff and his wife denied having ever executed the deed. Upon the hearing, witnesses were examined *viva voce*, in respect to the execution of the deed.

R. Palmer, in support; Simpson, contra.

*Cur. ad. vult.*

The Master of the Rolls said, that if the legacy claimed had been of larger amount, he should have desired the assistance of a jury to enable him to decide upon the case. As however the legacy was small, and he was of opinion the signatures to the deed were not those of the plaintiff and his wife, a decree would be made for its payment.

### Vice-Chancellor Turner.

*Cole v. Muddie.* July 22, 1852.

**CUSTODY OF TITLE-DEEDS.—ASSIGNMENT**

BY CO-TRUSTEE AND CUSTODIUM TRUST.  
—LIEN OF TRUSTEES.

*The title-deeds to certain leasehold property, bequeathed to the plaintiffs and T. in trust for the latter, had come into the possession of T., although there was no assignment of the estate, and he had assigned the estate and delivered over the title-deeds to secure a debt, and his assignee assigned and handed over the deeds to the defendant: Held, that as the plaintiffs were entitled against T., who was considerably indebted to the estate, to a receiver, he could not have retained possession of the deeds, and the defendant, his assignee, was decreed to deliver up the same to the plaintiffs.*

CERTAIN leasehold property was bequeathed by the testatrix to the plaintiffs and John Townsend, upon certain trusts for the benefit of the latter, and the will was duly proved by them. A suit had been instituted for the administration of the estate by two of the residuary legatees, and a decree was made on March, 1846. It appeared that the title-deeds had come into the possession of Mr. Townsend, although there had been no conveyance to him of the estate, and that he had delivered them over to a Mr. Arden to secure a sum of 300*l.*, and had executed an assignment of the estate in August, 1847. Mr. Arden, in March, 1848, assigned and handed over the deeds to the defendant, and in December, 1847, the administration suit was registered as *a lis pendens*. Mr. Townsend was considerably indebted to the estate.

This suit was instituted to recover the title-deeds.

The Vice-Chancellor said, that, as between the plaintiffs and Mr. Townsend, they would have been entitled to a receiver, on the ground of their lien for the debt due from him to them as co-executors, and that as he would not have been entitled to retain possession of the estate, he could not retain the deeds. The equity of the estate must prevail over that of the defendant as assignee of Townsend, and a decree be made for the delivery up of the deeds.

Vice-Chancellor Kindersley.

Harris v. Poynder. July 20, 1852.

TENANT FOR LIFE.—LIABILITY TO REPAIR  
LEASEHOLDS.—REVERSIONER.

*A testator left all his property, which included certain leaseholds, to his wife for life, and after her death to his son absolutely. The landlord's claim for dilapidations in respect of a covenant to repair the leaseholds, had been settled by the tenant for life: Held, that as the claim was due at the testator's death, it was payable, not by the tenant for life, but out of the residuary estate.*

THE testator, Mr. Poyner, by his will, appointed his widow and son executrix and executor and gave all his property to them in trust for his wife, for life, so long as she

should remain his widow, and if she again married, then for her separate use, and after her death to the use of his son, his heirs, executors, administrators, and assigns, to and for his and their own use and benefit for ever. It appeared that certain leasehold premises held by the testator under a covenant to repair, were in a dilapidated condition at his death, and that the widow had discharged the landlord's claim for such repairs. The question arose whether the tenant for life or the residuary estate were liable for the repairs.

J. Bailey and Rawlinson, for an annuitant, contended the tenant for life was liable; Bacon and Baggallay, contra; Walford, for other parties.

The Vice-Chancellor said, that as the amount paid for repairs was due at the testator's death, the tenant for life was not liable to bear the charge, and the landlord besides might have proceeded against the executors for the breach of the covenant to repair, and the claim must therefore be paid out of the residuary estate.

Vice-Chancellor Parker.

Macintosh v. Great Western Railway Company. July 29, 1852.

EXAMINATION DE BENE ESSE.—PUBLICATION OF DEPOSITIONS.—CROSS-EXAMINATION.

*A witness was examined de bene esse on the part of the plaintiff under a commission, and was, it appeared, incapable of being examined by reason of age and infirmity. On a motion for publication of the depositions when or after publication passed in the cause, an order was made for the motion to stand over with liberty to apply, and for the defendants to be at liberty to cross-examine the witness by anticipation, and for the issue of a commission for that purpose without prejudice to any question.*

In this case, Mr. William Henderson, who was 78 years of age and in an infirm state of health, had been examined *de bene esse* on behalf of the plaintiff under a commission, and the depositions had been duly returned to the Clerk of Records and Writs.

Russell and Bazalgette now appeared in support of a motion that such depositions might, when or after publication passed in the cause, be published and read and used upon the hearing and in all subsequent proceedings in like manner and to the same extent as if they had been taken after replication filed. They cited *Gason v. Wordenworth*, 2 Ves. S. 337.

Bacon and T. Stevens, contra, referred to *Forayth v. Ellice*, 2 M.N. & G. 209.

The Vice-Chancellor said, that under the circumstances, an order would be made for the motion to stand over with liberty to apply, and for the defendants to be at liberty to cross-examine the witness by anticipation, and for the issue of a commission for that purpose, without prejudice to any question.

## ANALYTICAL DIGEST OF CASES,

REPORTED IN ALL THE COURTS.

## Courts of Equity.

[For the previous Sections of the Digest in this Volume, see

*Privy Council*: Appeals, p. 17.

*House of Lords*: Appeals, p. 38.

*Courts of Equity*:

*Law of Attorneys and Solicitors*, p. 125.

*Contributories under the Winding-up Act*, p. 143.

*Law of Trustees*, p. 165.

*Lunacy*, p. 185.

*Law relating to Infants*, p. 186.

*Law relating to Charities*, p. 203.

*Appeals in Bankruptcy*, p. 225.

*Construction of Statutes*, pp. 104, 286, 306, 325.

*Law of Wills*, 346, 367, 386.]

## LAW OF WILLS.

[Concluded from p. 368.]

## POWER TO VARY SECURITIES.

*Conversion*.—A power to vary securities is important, as showing that the testator did not intend his residue to remain on perishable security. *Morgan v. Morgan*, 14 Beav. 85.

## POWER OF APPOINTMENT.

1. *A. B.* was, at the date of her will, entitled for life under her marriage settlement to the dividends of a sum of consols, with a power of appointment over a portion of such consols which, in default of appointment, was to go to her next of kin living at her death. She was also entitled for life under the will of her husband to the dividends of 10,000*l.* consols, and of various other stocks, with a power of appointment by deed or will, attested by two witnesses, over one-third part of such sums, and in default of appointment the stock was limited to other parties. By an unattested will, not referring to the powers, she gave four several sums (amounting to 3,000*l.* consols), "in the 3*l.* per Cent. Consols," to four charities, and "the remainder in the 3*l.* per Cents.," and in the other stocks in the settlement, naming them, the other parties: *Held*, that the will operated as an execution of the power under the will of the husband, and also, that the words "the remainder in the 3*l.* per Cents.," sufficiently showed that the legacies previously given were part of a larger amount of stock in that specific fund, and whether the specific stock referred to might mean stock which the testatrix might purchase between the date of her will and her death, or stock existing at the date of her will, still the gifts were specific.

*Held*, also, that in the case, that, as the parties entitled in default of appointment under the settlement were not parties to the suit, the Court could make no effective decree in the suit to charge the fund under the the settlement, and that there was no ground for restrain-

ing the charities from taking their legacies exclusively out of the consols, under the will of the husband. *Innes v. Sayer*, 3 M.N. & G. 606.

2. *Prior to Wills' Act of 1837*.—*Ineffectual execution*.—The circumstances that a testatrix had not nearly sufficient property of her own to satisfy the legacies bequeathed by her, and that the legacies added together exactly amounted to a sum over which she had a power of appointment by will: *Held* not sufficient grounds for deciding that the will (executed before the Wills' Act of 1837 came into operation) was a good execution of the power, there being no reference to the power in it. *Davies v. Thomas*, 3 De G. & S. 347.

## REPUGNANCY.

*Gift, whether specific or residuary*.—A testator gave various specific portions of personal estate to his wife for and during her natural life, if she should so long continue his widow, but at her death, or in case she should marry again, then he gave all the things before given, adding the words "and effects, and also all my household furniture, which I hereby give to her for her sole use and benefit for and during the term of her natural life, if she shall so long continue my widow," to be equally divided among the children that he then had or might hereafter have by his said wife; but in case his wife should not marry again after his decease, he gave her "all and every his personal estate and effects whatsoever" for her life, and the same to be equally divided to and amongst such of his children as should be living at her decease, share and share alike. The testator died within three weeks after making his will.

*Held*, 1st, that the first gift was not merely specific, but passed the whole to his personal estate; 2ndly, that the two clauses were not repugnant, but the first was intended to apply to the case of the widow marrying again, and the second to the case of her not marrying again; and the latter event being that which happened, the children living at the death of the widow were alone entitled, to the exclusion of representatives of deceased children. *Wiggins v. Wiggins*, 2 Sim. N. S. 226.

## RESIDUARY ESTATE.

*Vesting Tenancy in common*.—A gift of residuary estate to *A.*, and such of the children of *B.* as should be living at the death of *C.*, their respective heirs, executors, &c., in equal shares, as tenants in common, and not as joint tenants; but if any such children should die under 21, their shares to be in trust for the survivor or survivors, and other or others of them the said children of *B.* and the said *A.*, living at the decease of *C.*, and his and their respective heirs, executors, &c., in equal shares, as tenants in common, and not as joint tenants, so and in such manner that the children of *B.* attaining

21 and surviving C., and the said A., in case A. survive C., should take equally *per capita*: *Held*, that A. surviving the testator, and dying in the lifetime of C., took, nevertheless, with the children of B. who survived C., a vested share in the residuary estate. *Falkner v. Grace*, 9 Hare, 282.

## RESIDUE.

1. *Abatement of legacies*.—A testator having a power of appointment by will over a sum of stock, bequeathed two sums of 5,000*l.* and 500*l.* sterling thereout to A. and B., and the residue to his son. The stock became in equity liable to his debts, and by payment thereof; and of the costs of the suit, the fund became less than 5,500*l.* sterling: *Held*, that the pecuniary and residuary legatees were not liable to abate proportionably; but that the residuary gift failed altogether. *Petre v. Petre*, 14 Beav. 197.

2. *Gift to executrix on trust*.—By implication.—The testatrix, by her will, after giving, among other legacies, a sum of 3,000*l.* to S. P., and a like sum of 3,000*l.* in addition, for the trouble she would have in acting as executrix, bequeathed all her residuary personal estate and effects unto the said S. P., "well knowing that she will make a good use and dispose of it in a manner in accordance with my views and wishes:" the testatrix appointed S. P. sole executrix of her will: *Held*, that S. P. did not take the residue for her own benefit, but that the words of the bequest created a trust. *Briggs v. Penny*, 3 M. & N. & G. 546.

## REVOCATION.

*Election*.—In April, 1811, A. conveyed an estate (which stood limited to him and his trustee to the usual uses to bar dower) to a mortgagee in fee, subject to a proviso for the re-conveyance thereof to him, his heirs, appointees, or assigns, or to such other person or persons, to such uses and in such manner as he or they should direct. In May following, he devised all his messuages, lands, &c., and all other his real estate, or which he had contracted to purchase, situate in or near the parishes of B. and S. or elsewhere in England, of or to which he or any person or persons in trust for him, was or were seised or entitled for any estate of freehold and inheritance or of freehold only, in possession, reversion, remainder, or expectancy, or which he had power to dispose of or appoint by his will, to J. D., a stranger to him in blood, and his heirs, to certain uses and upon certain trusts. In 1813, he paid off the mortgage, and took a re-conveyance, by which, after reciting the mortgage, the premises were limited to him and his trustee, to the usual uses to bar dower.

In 1809, he purchased an estate in one of the parishes mentioned in his will, at an auction, and, in November, 1811, that estate was conveyed to him and his trustee, to the usual uses to bar dower.

*Held*, that the re-conveyance of 1813, and the conveyance of 1811, revoked the will as to the mortgaged premises and purchased estate, respectively, and that the testator's heir (who

was entitled to benefits under the will) was not bound to elect. *Plowden v. Hyde*, 2 Sim. N.S. 171.

Cases cited in the judgment: *Bullin v. Fletcher*, 1 Keen, 369; *Thellusson v. Woodford*, 13 Ves. 209; *Churchman v. Ireland*, 1 Russ. & M. 250; *Rudstone v. Anderson*, 2 Ves. 8. 418; *Hone v. Medcraft*, 1 Bro. C. C. 261; *James v. Dean*, 11 Ves. 388.

## SETTLEMENT.

*Construction*.—*Bond debt*.—By a settlement, the wife's father covenanted to pay 3,000*l.* to trustees for the husband for life, then to the wife for life, and afterwards for the younger children; but it was provided that, upon the husband's settling a certain real estate, he should become absolutely entitled to the 3,000*l.* In 1814, the husband assigned that sum to trustees for his wife, during their joint lives. In 1820, the estate was settled, and in 1823, the 3,000*l.* was paid to the trustees, who paid it over to the husband, taking his bond for the amount. The husband, by his will, directed his debts, including, as he declared, this bond, to be paid out of his real estate: *Held*, that, upon satisfaction of the wife's claim, the debt upon the bond ceased. *Senhouse v. Hall*, 14 Beav. 241.

## SUBSTITUTION.

*Cutting down absolute gift*.—Bequest to H. S. for life, and after her decease, to the testator's four brothers and sister, "or such of them as should be then living," equally. And in case any of them should be then dead, then he bequeathed the deceased child's share to the children, "to be paid at the time before-mentioned." The brothers and sister all died in the lifetime of H. S., one (A. B.) having had no children: *Held*, that the representatives of A. B. were entitled to his share, and that all the children took, whether living at the death of H. S. or not. *Masters v. Scales*, 13 Beav. 60.

## TENANT FOR LIFE.

*Interest on incumbrances*.—A testator directed his real estate to be sold, "immediately or as soon as conveniently might be," and applied in aid of his personal estate, in payment of his debts; but until the settlement should be made as after directed, the rents were to be applied in keeping down the mortgages, and the residue to be paid to the persons entitled under the settlement. He then directed the unsold hereditaments to be settled on A. for life, with remainder over. The testator was greatly indebted, on bonds, and his personal estate was largely deficient. More than a year elapsed before the sale of the real estates: *Held*, that the interest on all the debts for the first year was payable out of the corpus of the real estate, but that the tenant for life was bound to keep down the subsequent interest. *Grisley v. Earl of Chesterfield*, 13 Beav. 288.

## TRUST.

1. *Bequests in properly attested will to trustees on trusts to be declared by an unattested*

**Instrument.**—A testator gave a policy of assurance to two trustees, "to hold the same upon uses appointed by letter signed by them and myself." No such letter existed at the date of the will, but the testator had previously asked the trustees, who had consented, to accept the bequest for the benefit of persons and objects then named by the testator. Long after the date of his will, the testator wrote a letter, addressed to his executors, stating that he had, by his will, left the policy to the two trustees, to be delivered up to them for the purposes they had agreed to carry out. At the same time the testator signed an unattested memorandum, declaring the trusts on which the trustees were to hold the policy given to them by his will. The trustees retained the letter and the memorandum until after the testator's death. Upon a claim by one of the persons beneficially interested under the memorandum, against the executors and trustees: *Held*, that the testator could not prospectively create for himself a power to dispose of property by an instrument not duly executed as a will; and that the letter would not operate as a gift *inter vivos*; and that the trustees held the proceeds of the policy in trust for the residuary legatees under the testator's will. *Johnson v. Ball*, 5 De G. & S. 85.

Cases cited in the judgment: *Countess De Zichy Ferraris v. Marquis of Hertford*, 3 Curt. 468; 4 Moore, P. C. C. 355; *Briggs v. Pumy*, 3 De G. & S. 525.

2. **Precatory wards.**—Testator by his will gave "all my property of whatever description, whether in possession, reversion, remainder, or expectancy, or which I may be possessed of at the time of my death, and I give and bequeath the same and every part thereof unto my dear wife Jane, her executors, administrators, and assigns, to and for her and their own use and benefit, upon the fullest trust and confidence reposed in her, that she shall dispose of the same to and for the joint benefit of herself and my children."

The Court gave an opinion that there was no trust created for the children; but declining to make a positive declaration to that effect, *held*, that it would be right to order the residuary personal estate to be transferred and paid to the widow, and decreed accordingly. *Webb v. Woods*, 2 Sim. N. S. 267.

Cases cited in the judgment: *Crockett v. Crockett*, 1 Hare, 451; 5 Hare, 326; 2 Phill. 553; *Raikes v. Ward*, 1 Hare, 445; *Cooper v. Thornton*, 3 Bro. C. C. 96, 186; *Robinson v. Tickell*, 8 Ves. 142; *Woods v. Woods*, 1 Myl. & Cr. 401.

2. **Words expressing confidence.**—*Unattested memorandum.*—*Resulting trust for next of kin.*—A testatrix bequeathed 3,000*l.* to a legatee, whom she appointed her sole executrix; and 3,000*l.* in addition for the care and trouble she would have in acting as executrix. And the testatrix bequeathed all the rest, residue, and remainder of her personal estate to the same legatee, her executors, administrators, and as-

signs, "well knowing" that she would make a good use and dispose of it in a manner in accordance with the testatrix's views and wishes. Among the testatrix's papers some writings were found, made after the passing of the Wills' Act, but not attested as required by that statute, denoting several charitable as well as other gifts, which the testatrix desired should be made. One of these was headed "my wishes."

*Held*, that there was no sufficient expression of intention that the executrix should take the residue beneficially, and that she therefore held it in trust for the next of kin.

*Held*, also, that the unattested papers could not be looked at for the purpose of ascertaining what the testatrix's intentions were. *Briggs v. Penny*, 3 De G. & S. 525.

Cases cited in the judgment: *Gibbs v. Rumsey*, 2 V. & B. 294; *Lechmere v. Lavis*, 2 My. & K. 197; *Wood v. Cox*, 2 My. & Cr. 684; *Mordaunt v. Hussey*, 4 Ves. 117; *Morieux v. Bishop of Durham*, 10 Ves. 522; *Lord Crawley v. Hale*, 14 Ves. 307; *Mence v. Mence*, 18 Ves. 348; *Gerard v. Hanbury*, 3 Mer. 150; *Ellis v. Selby*, 1 My. & Cr. 286; *Omanney v. Butcher*, T. & R. 260; *Vesey v. Jamson*, 1 S. & S. 69; *Braddon v. Farrand*, 4 Russ. 87; *Adlington v. Cann*, 3 Atk. 141; *Habergham v. Vincent*, 2 Ves. J. 204; 4 Bro. C. C. 353; *Muckleston v. Brown*, 6 Ves. 52; *Strickland v. Aldridge*, 9 Ves. 516.

#### VESTING AND DIVESTING.

"*Dying without issue.*"—A testator, who had two sons and one daughter, gave the interest, dividends, and annual proceeds of 3,000*l.* stock, standing in his name, to *W.*, one of his children, for life, and after his decease, he gave the said principal stock or sum of 3,000*l.* unto all and every the child and children of *W.* to be equally divided between and amongst them, if more than one, share and share alike; and if but one, the whole to such one, to be paid or transferred to him, her, or them, on his, her, or their attaining 21, and the interest to be in the meantime applied for maintenance and education; he gave similar legacies to each of his other two children and their children; and upon the death of either of my said sons or daughter without issue, then I direct that the interest, dividends, and produce so as aforesaid given and bequeathed to him, her, or them so dying, shall be paid and payable to the survivors or survivor of them my said sons and daughter in equal shares and proportions.

The testator's son *W.* survived him, and had one child, who predeceased him.

*Held*, that the limitation over referred to the death of either of the testator's children without leaving issue living at his death; that the child of *W.* took a vested interest at his birth, but liable to be divested by the death of *W.*, without leaving issue living at his death, and that the gift over therefore took effect. (*Billingpley v. Wills*, 3 Atk. 219, and *Battisford v. Keddell*, 3 Ves. 363, commented upon.) *Westwood v. Southey*, 2 Sim. N. S. 193.

# The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

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SATURDAY, SEPTEMBER 25, 1852.
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## ANNOTATIONS ON THE COMMON LAW PROCEDURE ACT, No. II.

### DEFENDANTS BEYOND THE JURISDICTION.

UNDER the system which exists but is about to be abrogated, the position of a plaintiff who desires to sue a defendant resident beyond the jurisdiction, is surrounded with difficulties. The process usually resorted to in such cases, is a writ of summons, followed by a *distringas* in order to found proceedings to outlawry, which are at once dilatory, expensive, and ineffectual. The writ of *distringas*, whether for the purpose of compelling appearance, or for proceedings to outlawry, is expressly abolished by the Common Law Procedure Act, and a short and summary mode of proceeding substituted, the form to be adopted being in some degree governed by the circumstance of the intended defendant being a British subject resident in a foreign country, or a foreigner resident beyond the jurisdiction of the English Courts.

#### 1. *British Subjects abroad.*

The Schedule "A" of the Act gives the form of a writ of summons to be used when it is proposed to commence an action against a British subject resident beyond the jurisdiction: it differs in no material particular from the ordinary writ, but contains an indorsement specifying that it is for service out of the jurisdiction, and the time mentioned for appearance, instead of being fixed at eight days, is to be regulated by the distance from England of the place where the defendant resides. The Act furnishes no scale by which the time for appearance is to be proportioned to distance, and it may be inferred that this is to remain to some extent matter of discretion, as it would be difficult to frame any rule

accurately specifying the time, and which would be applicable to each particular case. Perhaps no insuperable difficulty would arise in determining how many days should be allowed for appearance to a defendant resident in Dublin or Paris, or how many months to a defendant residing in Melbourne or Hong Kong; but there are localities from which the communication with England is so uncertain as to render it difficult to prescribe the exact time that should be allowed for entering an appearance; and in such cases, we apprehend the plaintiff's attorney must take it upon himself to determine, in the first instance, what time should be given, subject to the consideration that the Court or a Judge, who is finally to authorise proceedings in the action, is especially required "to have regard to the time allowed for the defendant to appear being reasonable."

It is not intended, it may be presumed, that a writ for service out of the jurisdiction shall issue in any cases except those in which the Court or a Judge can be satisfied, by affidavit, "that there is a cause of action which arose within the jurisdiction," or that the action is brought "in respect of a breach of contract made within the jurisdiction." If the contract upon which the action is founded, or the whole cause of action, were beyond the jurisdiction of the Superior Courts, according to our reading of the Act, the writ for service out of the jurisdiction is not applicable; nor does it appear to be intended that this form of writ should be operative, unless it has been personally served upon the defendant, or reasonable efforts were made to effect personal service under circumstances sufficient to satisfy the Court or Judge that the writ came to the defendant's knowledge, and that he wilfully neglected to appear to it, or lives out of the jurisdiction in order to



defeat and delay his creditors. When the Court or a Judge is satisfied that the requirements of the Statute in the various particulars enumerated have been fulfilled, such Court or Judge may direct, that the plaintiff shall be *at liberty to proceed* in the action in such manner and subject to such conditions as may be thought fit, having regard to the circumstances of the case. It is also provided, that where a writ issues against a defendant residing out of England, the amount of the damages must be proved before a jury under a writ of inquiry, or by a Master of one of the Courts, according to the nature of the case, as such Court or Judge may direct; and in no case can the plaintiff be entitled to judgment until the damages have been ascertained.

The object of these precautionary provisions, we apprehend, is to protect a defendant resident beyond the jurisdiction by affording him sufficient opportunity of defending an action brought against him in England, if he think fit so to do. When the defendant appears to a writ properly issued and indorsed for service out of the jurisdiction, the process has performed its function, and the action proceeds in the ordinary course without any especial interposition of authority by the Court. It is only when the defendant does not appear, that it is considered necessary to invoke the authority of the Court or a Judge, to direct that the action may proceed. It will be observed, that the section of the Act (s. 18) which treats of the writ of summons to be served on British subjects out of the jurisdiction, does not indicate *when* the application should be made to the Court or Judge to allow the action to proceed, but it is manifestly intended that the application should be made after service or ineffectual attempts to serve the writ, and before any further proceeding by declaration or otherwise. The order of the Court or Judge to proceed is substituted for the order to issue a writ of distringas under the present practice, and the substitution cannot fail to be regarded as a decided improvement.

## 2. *Actions against Foreigners.*

When the defendant is a *foreigner resident beyond the jurisdiction*, the course of proceeding in the first instance is peculiar. A writ of summons is to issue in the form prescribed by the Act, (Sched A. No. 3,) and instead of serving the writ as in other cases, notice of the writ is to be served, in the form required by the Act. The notice intimates that an action has been commenced, and that the defendant is required

to defend the action by causing an appearance to be entered, or in default that the plaintiff by leave of the Court or a Judge, may proceed to execution. The amount of the plaintiff's claim is indorsed on the notice, with an announcement that if such amount, together with the costs, be paid within the time limited for appearance, the action will be stayed. After the service of notice in the form prescribed, the course of proceeding upon a writ issued against a foreigner is precisely similar to that to be adopted against a British subject resident abroad, the time for appearance being regulated by the distance of the defendant from England; and the plaintiff being bound, in every case, to prove the amount of his claim, either upon a writ of inquiry, or by reference to the Master, as directed by the Court or a Judge.

## 3. *Amending Process, &c.*

Under the existing system great difficulty is found in *amending writs*, and consequent injustice when an action is bound by the operation of the statutes of limitation. It is now provided that the omission to insert in, or indorse on the writ any of the matters required by the Act, is not to nullify it, but that the writ may be set aside as irregular, or amended, upon application to the Court or a Judge, upon such terms as may be thought proper. As the Act provides for the issue of *three distinct forms of writs* of summons, it is also enacted, that the substitution of one form of writ for another by mistake or inadvertence, shall not be a fatal objection, but that the writ may at any time, upon an *ex parte* application to a Judge, be amended without costs.

A writ for service within the jurisdiction, may be concurrent with one for service out of the jurisdiction, and *vice versa*.

*Affidavits* for enabling the Court or a Judge to direct proceedings against a defendant residing out of the jurisdiction, may be sworn before a consul-general, consul, vice-consul, or consular agent, appointed by her Majesty at any foreign port or place, and admissible in evidence, saving all just exceptions, upon proof of the official character and signature of the person purporting to have signed the same. Persons forging the signature to affidavits made abroad, or knowingly tendering such affidavits in evidence with a false signature, are to be guilty of felony, and persons wilfully and corruptly making a false affidavit, are to be deemed guilty of perjury, precisely as if such affidavit had been made in England before a competent authority.

The novel provision made by the Act for indorsing on the writ the particulars of demands, and allowing the plaintiff to obtain judgment without declaration, when no appearance is certain, will be more conveniently described in a separate article, to be speedily published.

## NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

### COMMON LAW PROCEDURE.

15 & 16 VICT. c. 76.

[Continued from p. 399, ante.]

#### NOTICE OF TRIAL, INQUIRY, AND COUNTERMAND.

And with respect to notice of trial and inquiry, and countermand thereof, be it enacted as follows :

97. Ten days' notice of trial or inquiry shall be given, and shall be sufficient in all cases, whether at Bar or Nisi Prius, in town or country, unless otherwise ordered by the Court or a Judge.

98. A countermand of notice of trial shall be given four days before the trial mentioned in the notice of trial, unless short notice of trial has been given, and then two days before the time mentioned in the notice of trial, unless otherwise ordered by the Court or a Judge, or by consent.

99. A rule for costs of the day for not proceeding to trial pursuant to notice, or not countermanding in sufficient time, may be drawn up on affidavit, without motion.

#### JUDGMENT FOR NOT PROCEEDING TO TRIAL.

And with respect to judgment for default in not proceeding to trial, be it enacted as follows :

100. The Act passed in the 14 Geo. 2, c. 17, intituled "An Act to prevent Inconveniences arising from Delays of Causes after Issue joined," so far as the same relates to judgment as in the case of a nonsuit, shall be and the same is hereby repealed, except as to proceedings taken or commenced thereupon before the commencement of this Act.

101. Where any issue is or shall be joined in any cause, and the plaintiff has neglected or shall neglect to bring such issue on to be tried, that is to say, in town causes where issue has been or shall be joined in, or in the vacation before, any term, for instance, Hilary term, and the plaintiff has neglected or shall neglect to bring the issue on to be tried during or before the following Term and Vacation, for instance, Easter Term and Vacation, and in country causes where issue has been or shall be joined in, or in the Vacation before, Hilary or Trinity Term, and the plaintiff has neglected or shall neglect to bring the issue on to be tried at or before the second assizes following such Term, or if issue has been or shall be joined in, or in the Vacation before, Easter or

Michaelmas Term, then, if the plaintiff has neglected or shall neglect to bring the issue on to be tried at or before the first assizes after such Term, whether the plaintiff shall in the meantime have given notice of trial or not, the defendant may give 20 days notice to the plaintiff to bring the issue on to be tried at the sittings or assizes, as the case may be, next after the expiration of the notice; and if the plaintiff afterwards neglect to give notice of trial for such sittings or assizes, or to proceed to trial in pursuance of the said notice given by the defendant, the defendant may suggest on the record that the plaintiff has failed to proceed to trial, although duly required so to do (which suggestion shall not be traversable, but only to be subject to be set aside if untrue), and may sign judgment for his costs; provided that the Court or a Judge shall have power to extend the time for proceeding to trial, with or without terms.

#### NISI PRIUS RECORD.

And with respect to the Nisi Prius Record, be it enacted as follows :

102. The record of Nisi Prius shall not be sealed or passed, but may be delivered to the proper officer of the Court in which the cause is to be tried, to be by him entered as at present, and remain until disposed of.

103. Records of the Superior Courts of Common Law shall be brought to trial and entered and disposed of in the Counties Palatine in the same manner as in other counties.

#### JURY AND JURY PROCESS.

And with respect to juries and jury process, be it enacted as follows :

104. The several writs of *venire facias juratores*, and *distingas juratores*, or *habeas corpus juratorum*, and the entry *jurata ponitur in respectu*, shall no longer be necessary or used.

105. The precept issued by the Judges of assize to the sheriff to summon jurors for the assizes shall direct that the jurors be summoned for the trial of all issues, whether civil or criminal, which may come on for trial at the assizes; and the jurors shall thereupon be summoned in like manner as at present.

106. A printed panel of the jurors summoned shall, seven days before the commission day, be made by the sheriff, and kept in the office for inspection; and a printed copy of such panel shall be delivered by the sheriff to any party requiring the same, on payment of 1s.; and such copy shall be annexed to the Nisi Prius Record.

107. The Sheriffs of London and Middlesex respectively shall, pursuant to a precept under the hand of a Judge of any of the said Superior Courts, and without any other authority, summon a sufficient number of common jurors for the trial of all issues in the Superior Courts of common Law, in like manner as before this act; and seven days before the first day of each sittings a printed panel of the juror so summoned for the trial of causes at such sittings shall be made by such sheriffs, and kept in their offices for

public inspection; and a printed copy of such panel shall be delivered by the said sheriffs to any party requiring the same, on payment of one shilling; and such copy shall be annexed to the Nisi Prius Record; and the said precept shall and may be in like form as the precept issued by the Judges of Assize, and one thereof shall suffice for each term, and for all the Superior Courts; and it shall be the duty of the Sheriffs respectively to apply for and procure such precept to be issued in sufficient time before each term to enable them to summon the jurors in manner aforesaid; and it shall be lawful for the several Courts, or any Judge thereof, at any time to issue such precept or precepts to summon jurors for disposing of the business pending in such Courts, and to direct the time and place for which such jurors shall be summoned, and all such other matters as to such judge shall seem requisite.

108. The precept issued by the Judges of assize as aforesaid shall direct the sheriff to summon a sufficient number of special jurymen, to be mentioned therein, not exceeding forty-eight in all, to try the special jury causes at the assizes; and the persons summoned in pursuance of such precept shall be the jury for trying the special jury causes at the assizes, subject to such right of challenge as the parties are now by law entitled to; and a printed panel of the special jurors so summoned shall be made, kept, delivered, and annexed to the Nisi Prius Record, in like time and manner and upon the same terms as hereinbefore provided with reference to the panel of common jurors; and upon the trial the special jury shall be balloted for, and called in the order in which they shall be drawn from the box, in the same manner as common jurors: provided that the Court or a Judge, in such case as they or he may think fit, may order that a special jury be struck according to the present practice, and such order shall be a sufficient warrant for striking such special jury, and making a panel thereof for the trial of the particular cause.

109. In any county, except *London* and *Middlesex*, the plaintiff in any action, except replevin, shall be entitled to have the cause tried by a special jury, upon giving notice in writing to the defendant, at such time as would be necessary for a notice of trial, of his intention that the cause shall be so tried; and the defendant, or plaintiff in replevin, shall be so entitled, on giving the like notice within the time now limited for obtaining a rule for a special jury: provided that the Court or a Judge may at any time order that a cause shall be tried by a special jury, upon such terms as they or he shall think fit.

110. In *London* and *Middlesex* special jurors shall be nominated and reduced by and before the under sheriff and secondary respectively, in like manner as by the master before this act, upon the application of either party entitled to a special jury, and his obtaining a rule for such purpose; and the names of the jurors so struck shall be placed upon a panel,

which shall be delivered and annexed to the Nisi Prius record, in like manner and upon the same terms as hereinbefore provided with reference to the panel of common jurors; and upon the trial the special jury shall be balloted for, and called in the order in which they shall be drawn from the box, in the same manner as common jurors.

111. Where the defendant in any case, or plaintiff in replevin, gives notice of his intention to try the cause by a special jury, and the venue is in *London* or *Middlesex*, the Court or a Judge, if satisfied that such notice is given for the purpose of delay, may order that the cause be tried by a common jury, or make such other order as to the trial of the cause as such Court or Judge shall think fit.

112. Where notice has been given to try by special Jury, either party may, six days before the first day of the sittings in *London* or *Middlesex*, or adjournment day in *London*, or commission day of the assizes, give notice to the Sheriff that such cause is to be tried by a special jury; and in case no such notice be given no special jury need be summoned or attend, and the cause may be tried by a common jury, unless otherwise ordered by the Court or a Judge.

113. In all cases where notice is not given to the Sheriff that the cause is to be tried by a special jury, and by reason thereof a special jury is not summoned or does not attend, the cause may be tried by a common jury, to be taken from the panel of common jurors, in like manner as if no proceedings had been had to try the cause by a special jury.

114. A writ of view shall not be necessary or used, but, whether the view is to be had by a common or special jury, it shall be sufficient to obtain a rule of the Court or Judge's order, directing a view to be had; and the proceedings upon the rule for a view shall be the same as the proceedings heretofore had under a writ of view; and the Sheriff, upon request, shall deliver to either party the names of the viewers, and shall also return their names to the associate for the purpose of their being called as jurymen upon the trial.

115. The jurors contained in such panels as aforesaid shall be the jurors to try the causes at the assizes and sittings for which they shall be summoned respectively; and all such proceedings may be had and taken before such juries in like manner, and with the like consequences in all respects, as before any jury summoned in pursuance of any writ or writs of *venire facias juratores*, *distringas juratores*, or *habeas corpora juratorum*, before this Act.

116. Nothing herein contained shall affect the right of a defendant to take down a cause for trial, after default by the plaintiff to proceed to trial, according to the course and practice of the Court; and if records are entered for trial both by the plaintiff and the defendant, the defendant's record shall be treated as standing next in order after the plaintiff's record in the list of causes, and the trial of the cause shall take place accordingly.

## ADMISSION OF DOCUMENT.

And with respect to the admission of documents, be it enacted as follows :

117. Either party may call on the other party by notice to admit any document, saving all just exceptions; and in case of refusal or neglect to admit, the costs of proving the document shall be paid by the party so neglecting or refusing, whatever the result of the cause may be, unless at the trial the Judge shall certify that the refusal to admit was reasonable; and no costs of proving any document shall be allowed unless such notice be given, except in cases where the omission to give the notice is in the opinion of the master a saving of expense.

118. An affidavit of the attorney in the cause, or his clerk, of the due signature of any admissions made in pursuance of such notice, and annexed to the affidavit, shall be in all cases sufficient evidence of such admissions.

119. An affidavit of the attorney in the cause, or his clerk, of the service of any notice to produce, in respect of which notice to admit shall have been given, and of the time when it was served, with a copy of such notice to produce annexed to such affidavit, shall be sufficient evidence of the service of the original of such notice, and of the time when it was served.

## EXECUTION.

And with respect to execution, be it enacted as follows :

120. A plaintiff or defendant, having obtained a verdict in a cause tried out of term, shall be entitled to issue execution in fourteen days, unless the Judge who tries the cause, or some other Judge, or the Court, shall order execution to issue at an earlier or later period, with or without terms.

121. It shall not be necessary to issue any writ directed to the sheriff of the county in which the venue is laid, but writs of execution may issue at once into any county, and be directed to and executed by the sheriff of any county, whether a County Palatine or not, without reference to the county in which the venue is laid, and without any suggestion of the issuing of a prior writ into such county.

122. All writs of every description issuing out of the Superior Courts of Common Law at Westminster, to be executed in the Counties Palatine, shall be directed and delivered to the sheriffs of such counties, and executed and returned by them to the Courts out of which such writs are issued, in the same manner in all respects as writs are executed and returned by the sheriffs of other counties.

123. In every case of execution, the party entitled to execution may levy the poundage fees and expenses of the execution, over and above the sum recovered.

124. A writ of execution issued after the commencement of this Act, if unexecuted, shall not remain in force for more than one year from the teste of such writ, unless renewed in the manner hereinafter provided; but such writ may, at any time before its expi-

ration, be renewed, by the party issuing it, for one year from the date of such renewal, and so on from time to time during the continuance of the renewed writ, either by being marked with a seal bearing the date of the day, month, and year of such renewal, (such seal to be provided and kept for that purpose at the office of the Masters of the Court out of which such writ issued,) or by such party giving a written notice of renewal to such sheriff, signed by the party or his attorney, and bearing the like seal of the Court; and a writ of execution so renewed shall have effect, and be entitled to priority, according to the time of the original delivery thereof.

125. The production of a writ of execution, or of the notice renewing the same, purporting to be marked with such seal, showing the same to have been renewed according to this Act, shall be sufficient evidence of its having been so renewed.

126. A written order under the hand of the attorney in the cause, by whom any writ of *capias ad satisfaciendum* shall have been issued, shall justify the sheriff, gaoler, or person in whose custody the party may be under such writ, in discharging such party, unless the party for whom such attorney professes to act shall have given written notice to the contrary to such sheriff, gaoler, or person in whose custody the opposite party may be; but such discharge shall not be a satisfaction of the debt, unless made by the authority of the creditor; and nothing herein contained shall justify any attorney in giving such order for discharge without the consent of his client.

127. It shall not be necessary in any case to sue out a writ of *habeas corpus ad satisfaciendum* to charge in execution a person already in the prison of the Court, but such person may be so charged in execution by a Judge's order made upon affidavit that judgment has been signed and is not satisfied; and the service of such order upon the keeper of the prison for the time being shall have the effect of a detainer.

## PROCEEDINGS TO REVIVE.

And with respect to proceedings for the revival of judgments and other proceedings by and against persons not parties to the record, be it enacted as follows :

128. During the lives of the parties to a judgment, or those of them during whose lives execution may at present issue within a year and a day without a *scire facias*, and within six years from the recovery of the judgment, execution may issue without a revival of the judgment.

129. In cases where it shall become necessary to revive a judgment by reason either of lapse of time, or of a change, by death or otherwise, of the parties entitled or liable to execution, the party alleging himself to be entitled to execution, may either sue out a writ of revivor in the form hereinafter-mentioned, or apply to the Court or a Judge for leave to enter a suggestion upon the roll, to the effect that it manifestly appears to the Court that such party

## RECENT DECISIONS IN THE SUPERIOR COURTS.

## AND SHORT NOTES OF CASES.

## Lord Chancellor.

*Scribner v. Smith.* July 16, 17, 1852.

WILL.—CONSTRUCTION.—REQUEST.—ABSO-  
LUTE OR FOR LIFE.

A testator, by his will, after giving life interests to his wife and eldest daughter, directed upon their deaths the property to be sold and the proceeds invested in land upon trust for his son in strict settlement, and by his codicil he directed that, in consequence of the death of his eldest daughter, the interest of his property in the Government funds (of which his estate in part consisted) should be paid to his wife for life, and at her death he gave one-half to his son, and the remaining half to be equally divided between his two daughters, "and at their death such shares to be equally divided among their children respectively." Held, reversing the decision of Vice-Chancellor Lord Cranworth, that the son was entitled to a moiety of the sum invested in the Government funds, and not to a life interest only.

THE testator, General Fost, by his will, dated in February, 1849, directed his real and personal property to be converted and the produce invested, and the interest to be paid as therein mentioned to his eldest daughter and his wife for life, and after the death of the survivor the trustees were empowered to sell and invest the proceeds in the purchase of land and hold the same in trust for his son in strict settlement. In March, 1849, the testator made a codicil and directed, in consequence of the death of his eldest daughter, that the interest of his property in the Government funds of Calcutta, which composed part of his estate, should be paid to his wife for life, and at her death he gave one-half of the said property to his son, and the remaining half to be equally divided between the testator's other two daughters, "and at their death such shares to be equally divided among their children respectively." The Vice-Chancellor Lord Cranworth having held that the son only took a life interest in the moiety, and that the disposition upon their deaths applied to the son as well as to the daughters, this appeal was presented.

*Cur. ad. vult.*

The Lord Chancellor said, that the testator intended his son should take absolutely, and the decision of the Court below was therefore reversed,—costs to be paid out of the fund.

## Lords Justices.

*Nelson v. Strangham.* August 5, 1852.

ADMINISTRATION SUIT.—TRANSFER OF CONTRIBUTORY'S ESTATE TO OFFICIAL MANAGER OF BANKING COMPANY.

An order was made, on the petition of the official manager, in a suit for the administration of the estate of a shareholder in a banking company directed to be wound up, and to which the executors were held liable as contributories, for the transfer to the official manager of the estate, there being no other creditors.

THIS was a petition on behalf of the official manager of the North of England Joint Stock Banking Company in this suit for the administration of the estate of Mr. Straffon, whose executors had been placed on the list of contributories to the company, which had been directed to be wound up, for the transfer to him of the estate, there being no other creditor.

J. V. Prior in support; Hallett, H. Clarke, Bates, W. D. Lewis, and Brodric for other parties, did not oppose.

The Lords Justices made the order as prayed.

## Master of the Rolls.

*Ellis v. Elliott.* July 13, 19, 1852.

CLAIM.—PAYMENT OF LEGACY.—DEED OF ASSIGNMENT.—FORGING SIGNATURES.—ISSUE AT LAW.

In defence to a claim for the payment of a legacy, a deed of assignment of the legacy was set up, but the plaintiff contended it was a forgery. Witnesses were examined *visà voce* on the hearing, and the Court decreed for payment of the legacy, without directing an issue at law,—the amount of the legacy being small.

THIS claim was filed by the plaintiff to recover the amount of a legacy to which his wife was entitled under the will of Mr. Joseph Elliott, upon the death of her mother. The defendant set up a deed of assignment of the legacy, dated in November, 1822, to himself, from the plaintiff and his wife, in consideration of 140*l.*, but the plaintiff and his wife denied having ever executed the deed. Upon the hearing, witnesses were examined *visà voce*, in respect to the execution of the deed.

R. Palmer, in support; Simpson, contra.  
*Cur. ad. vult.*

The Master of the Rolls said, that if the legacy claimed had been of larger amount, he should have desired the assistance of a jury to enable him to decide upon the case. As however the legacy was small, and he was of opinion the signatures to the deed were not those of the plaintiff and his wife, a decree would be made for its payment.

## Vice-Chancellor Turner.

*Cole v. Mudd.* July 22, 1852.

CUSTODY OF TITLE-DEEDS.—ASSIGNMENT

BY CO-TRUSTEE AND EXISTING TRUST.  
—LIEN OF TRUSTEES.

*The title-deeds to certain leasehold property, bequeathed to the plaintiffs and T. in trust for the latter, had come into the possession of T., although there was no assignment of the estate, and he had assigned the estate and delivered over the title-deeds to secure a debt, and his assignee assigned and handed over the deeds to the defendant: Held, that as the plaintiffs were entitled against T., who was considerably indebted to the estate, to a receiver, he could not have retained possession of the deeds, and the defendant, his assignee, was decreed to deliver up the same to the plaintiffs.*

CERTAIN leasehold property was bequeathed by the testatrix to the plaintiffs and John Townsend, upon certain trusts for the benefit of the latter, and the will was duly proved by them. A suit had been instituted for the administration of the estate by two of the residuary legatees, and a decree was made on March, 1846. It appeared that the title-deeds had come into the possession of Mr. Townsend, although there had been no conveyance to him of the estate, and that he had delivered them over to a Mr. Arden to secure a sum of 300*l.*, and had executed an assignment of the estate in August, 1847. Mr. Arden, in March, 1848, assigned and handed over the deeds to the defendant, and in December, 1847, the administration suit was registered as a *lis pendens*. Mr. Townsend was considerably indebted to the estate.

This suit was instituted to recover the title-deeds.

The Vice-Chancellor said, that, as between the plaintiffs and Mr. Townsend, they would have been entitled to a receiver, on the ground of their lien for the debt due from him to them as co-executors, and that as he would not have been entitled to retain possession of the estate, he could not retain the deeds. The equity of the estate must prevail over that of the defendant as assignee of Townsend, and a decree be made for the delivery up of the deeds.

Vice-Chancellor Kinsley.

Harris v. Poynder. July 20, 1852.

TENANT FOR LIFE.—LIABILITY TO REPAIR  
LEASEHOLDS.—REVERSIONER.

*A testator left all his property, which included certain leaseholds, to his wife for life, and after her death to his son absolutely. The landlord's claim for dilapidations in respect of a covenant to repair the leaseholds, had been settled by the tenant for life: Held, that as the claim was due at the testator's death, it was payable, not by the tenant for life, but out of the residuary estate.*

THE testator, Mr. Poynder, by his will, appointed his widow and son executrix and executor and gave all his property to them in trust for his wife, for life, so long as she

should remain his widow, and if she again married, then for her separate use, and after her death to the use of his son, his heirs, executors, administrators, and assigns, to and for his and their own use and benefit for ever. It appeared that certain leasehold premises held by the testator under a covenant to repair, were in a dilapidated condition at his death, and that the widow had discharged the landlord's claim for such repairs. The question arose whether the tenant for life or the residuary estate were liable for the repairs.

J. Bailey and Rawlinson, for an annuitant, contended the tenant for life was liable; Bacon and Baggallay, contra; Walford, for other parties.

The Vice-Chancellor said, that as the amount paid for repairs was due at the testator's death, the tenant for life was not liable to bear the charge, and the landlord besides might have proceeded against the executors for the breach of the covenant to repair, and the claim must therefore be paid out of the residuary estate.

Vice-Chancellor Parker.

MacIntosh v. Great Western Railway Company. July 20, 1852.

EXAMINATION DE BENE ESSE.—PUBLICATION OF DEPOSITIONS.—CROSS-EXAMINATION.

*A witness was examined de bene esse on the part of the plaintiff under a commission, and was, it appeared, incapable of being examined by reason of age and infirmity. On a motion for publication of the depositions when or after publication passed in the cause, an order was made for the motion to stand over with liberty to apply, and for the defendants to be at liberty to cross-examine the witness by anticipation, and for the issue of a commission for that purpose without prejudice to any question.*

IN this case, Mr. William Henderson, who was 78 years of age and in an infirm state of health, had been examined *de bene esse* on behalf of the plaintiff under a commission, and the depositions had been duly returned to the Clerk of Records and Writs.

Russell and Bazalgette now appeared in support of a motion that such depositions might, when or after publication passed in the cause, be published and read and used upon the hearing and in all subsequent proceedings in like manner and to the same extent as if they had been taken after replication filed. They cited *Gason v. Wordsworth*, 2 Ves. S. 337.

Bacon and T. Stevens, contra, referred to *Forayth v. Ellice*, 2 M'N. & G. 209.

The Vice-Chancellor said, that under the circumstances, an order would be made for the motion to stand over with liberty to apply, and for the defendants to be at liberty to cross-examine the witness by anticipation, and for the issue of a commission for that purpose, without prejudice to any question.

144. If the fact or facts suggested be admitted, or found to be true, the party suggesting shall be entitled to such judgment as he would have been entitled to if such fact or facts or allegations had been originally stated in such pleading, and proved or admitted on the trial, together with the costs of, and occasioned by, the suggestion and proceedings thereon; but if such fact or facts be found untrue, the opposite party shall be entitled to his costs of, and occasioned by, the suggestion and proceedings thereon, in addition to any other costs to which he may be entitled.

145. Upon an arrest of judgment, or judgment *non obstante veredicto*, the Court shall adjudge to the party, against whom such judgment is given, the costs occasioned by the trial of any issues of fact, arising out of the pleading for defect of which such judgment is given, upon which such party shall have succeeded; and such costs shall be set-off against any money or costs adjudged to the opposite party, and execution may issue for the balance, if any.

#### ERROR.

And with respect to proceedings in error, be it enacted as follows:—

146. No judgment in any cause shall be reversed or avoided for any error or defect therein, unless error be commenced, or brought and prosecuted with effect, within six years after such judgment signed or entered of record.

147. If any person that is or shall be entitled to bring error as aforesaid is or shall be, at the time of such title accrued, within the age of 21 years, *feme covert*, *non compos mentis*, or beyond the seas, then such person shall be at liberty to bring error as aforesaid, so as such person commences, or brings and prosecutes the same with effect, within six years after coming to or being of full age, discover, of sound memory, or return from beyond the seas; and if the opposite party shall, at the time of the judgment signed or entered of record, be beyond the seas, then error may be brought, provided the proceedings be commenced and prosecuted with effect within six years after the return of such party from beyond seas.

148. A writ of error shall not be necessary or used in any cause, and the proceeding to error shall be a step in the cause, and shall be taken in manner hereinafter mentioned; but nothing in this Act contained shall invalidate any proceedings already taken or to be taken by reason of any writ of error issued before the commencement of this Act.

149. Either party alleging error in law may deliver to one of the Masters of the Court a memorandum in writing, in the form contained in the Schedule (A.) to this Act annexed, marked No. 10, or to the like effect, entitled in the Court and cause, and signed by the party or his attorney, alleging that there is error in law in the record and proceedings; whereupon the Master shall file such memorandum, and deliver to the party lodging the same a note of the receipt thereof; and a copy

of such note, together with a statement of the grounds of error intended to be argued, may be served on the opposite party or his attorney.

150. Proceedings in error in law shall be deemed a supersedeas of execution from the time of the service of the copy of such note, together with the statement of the grounds of error intended to be argued, until default in putting in bail, or an affirmance of the judgment, or discontinuance of the proceedings in error, or until the proceedings in error shall be otherwise disposed of without a reversal of the judgment; provided always, that if the grounds of error shall appear to be frivolous, the Court or a Judge upon summons may order execution to issue.

151. Upon any judgment hereafter to be given in any of the said Superior Courts of Common Law in any action, execution shall not be stayed or delayed by proceedings in error, or supersedeas thereupon, without the special order of the Court or a Judge, unless the person in whose name such proceedings in error be brought, with two, or, by leave of the Court or a Judge, more than two sufficient sureties, such as the Court (wherein such judgment is or shall be given) or a Judge shall allow of, shall, within four clear days after lodging the memorandum alleging error, or after the signing of the judgment, whichever shall last happen, or before execution executed, be bound unto the party for whom any such judgment is or shall be given, by recognizance to be acknowledged in the same Court, in double the sum adjudged to be recovered by the said judgment, (except in case of a penalty, and in case of a penalty in double the sum really due, and double the costs,) to prosecute the proceedings in error with effect, and also to satisfy and pay (if the said judgment be affirmed, or the proceedings in error be discontinued by the plaintiff therein,) all and singular the sum or sums of money and costs adjudged or to be adjudged upon the former judgment, and all costs and damages to be also awarded for the delaying of execution, and shall give notice thereof to the defendant in error, or his attorney.

152. The assignment of and joinder in error in law shall not be necessary or used, and, instead thereof, a suggestion to the effect that error is alleged by the one party and denied by the other, may be entered on the judgment roll in the form contained in Schedule (A.) to this Act annexed, marked No. 11, or to the like effect: Provided that in case the defendant in error intends to rely upon the proceeding in error being barred by lapse of time, or by release of error, or other like matter of fact, he may give four days written notice to the plaintiff in error to assign error as heretofore, instead of entering the suggestion; and he shall, within eight days, plead thereto the bar by lapse of time, or release of error, or other like matter of fact; and thereupon such proceedings may be had as heretofore.

153. The roll shall be made up, and the suggestion last aforesaid entered by the plaintiff in

error within 10 days after the service of the note of the receipt of the memorandum alleging error, or within such other time as the Court or a Judge may order; and in default thereof, or of assignment of error in cases where an assignment is required, the defendant in error, his executors or administrators, shall be at liberty to sign judgment of *non-pros.*

154. In case error be brought upon a judgment given against several persons, and one or some only shall proceed in error, the memorandum alleging error, and the note of the receipt of such memorandum, shall state the names of the persons by whom the proceedings are taken; and in case the other persons, against whom judgment has been given, decline to join in the proceedings in error, the same may be continued, and the suggestion last aforesaid entered, stating the persons by whom the proceedings are brought, without any summons and severance, or if such other persons elect to join, then the suggestion shall state them to be, and they shall be deemed as plaintiffs in error, although not mentioned as such in the previous proceedings.

155. Upon such suggestion of error alleged and denied being entered, the cause may be set down for argument in the Court of Error in the manner heretofore used; and the judgment roll shall, without any writ or return, be brought by the Master into the Court of Error in the Exchequer Chamber, before the Justices, or Justices and Barons, as the case may be, of the other two Superior Courts of Common Law, on the day of its sitting, at such time as the Judges shall appoint, either in Term or Vacation; or if the proceedings in error be before the High Court of Parliament, then before the High Court of Parliament, before or at the time of its sitting; and the Court of Error shall and may thereupon review the proceedings, and give judgment as they shall be advised thereon; and such proceedings and judgment, as altered or affirmed, shall be entered on the original record; and such further proceedings as may be necessary thereon shall be awarded by the Court in which the original judgment was given.

156. Courts of Error shall have power to quash the proceedings in error in all cases in which error does not lie, or where they are taken against good faith, or in any case in which proceedings in error might heretofore have been quashed by such Courts; and such Courts shall in all respects have such jurisdiction over the proceedings as over the proceedings in error commenced by writ of error.

157. Courts of Error shall in all cases have power to give such judgment and award such process, as the Court, from which error is brought, ought to have done, without regard to the party alleging error.

158. Either party alleging error in fact may deliver to one of the Masters of the Court a memorandum in writing, in the form contained in the Schedule (A.) to this Act annexed, marked No. 12, or to the like effect, intitled in

the Court and cause, and signed by the party or his attorney, alleging that there is error in fact in the proceedings, together with an affidavit of the matter of fact in which the alleged error consists; whereupon the Master shall file such memorandum and affidavit, and deliver to the party lodging the same a note of the receipt thereof; and a copy of such note and affidavit may be served on the opposite party or his attorney; and such service shall have the same effect, and the same proceedings may be had thereafter as heretofore had after the service of the rule for allowance of a writ of error in fact.

159. The plaintiff in error, whether in fact or law, shall be at liberty to discontinue his proceedings by giving to the defendant in error a notice, headed in the Court and cause, and signed by a plaintiff in error or his attorney, stating that he discontinues such proceedings; and thereupon the defendant in error may sign judgment for the costs of, and occasioned by, the proceedings in error, and may proceed upon the judgment on which the error was brought.

160. The defendant in error, whether in fact or law, shall be at liberty to confess error, and consent to the reversal of the judgment, by giving to the plaintiff in error a notice, headed in the Court and cause, and signed by the defendant in error or his attorney, stating that he confesses the error, and consents to the reversal of the judgment; and thereupon the plaintiff in error shall be entitled to and may forthwith sign a judgment of reversal.

161. The death of a plaintiff in error after service to the note of the receipt of the memorandum alleging error, with a statement of the error, shall not cause the proceedings to abate, but they may be continued as hereinafter mentioned.

162. In case of the death of one of several plaintiffs in error, a suggestion may be made of the death, which suggestion shall not be traversable, but shall only be subject to be set aside if untrue, and the proceedings may be thereupon continued at the suit of, and against the surviving plaintiff in error, as if he were the same plaintiff.

163. In case of the death of a sole plaintiff or of several plaintiffs in error, the legal representative of such plaintiff or of the surviving plaintiff may, by leave of the Court or a Judge, enter a suggestion of the death, and that he is such legal representative, which suggestion shall not be traversable, but shall only be subject to be set aside if untrue, and the proceedings may thereupon be continued at the suit of, and against such legal representative as the plaintiff in error; and, if no suggestion shall be made, the defendant in error may proceed to an affirmance of the judgment according to the practice of the Court, or take such other proceedings thereupon as he may be entitled to.

164. The death of a defendant in error shall not cause the proceedings to abate, but they may be continued as hereinafter mentioned.

165. In case of the death of one of several



defendants in error, a suggestion may be made of the death, which suggestion shall not be traversable, but only be subject to be set aside if untrue, and the proceedings may be continued against the surviving defendant.

166. In case of the death of a sole defendant or of all the defendants in error, the plaintiff in error may proceed upon giving 10 days' notice of the proceedings in error, and of his intention to continue the same, to the representatives of the deceased defendants, or if no such notice can be given, then, by leave of the Court or a Judge, upon giving such notice to the parties interested as he or they may direct.

167. The marriage of a woman, plaintiff or defendant in error, shall not abate the proceedings in error, but the same may be continued in like manner as hereinbefore provided with reference to the continuance of an action after marriage.

#### EJECTMENT.

And with respect to the action of ejectment, be it enacted as follows :

168. Instead of the present proceeding by ejectment, a writ shall be issued, directed to the persons in possession by name, and to all persons entitled to defend the possession of the property claimed, which property shall be described in the writ with reasonable certainty.

169. The writ shall state the names of all the persons in whom the title is alleged to be, and command the persons, to whom it is directed, to appear, within sixteen days after service thereof, in the Court from which it is issued, to defend the possession of the property sued for, or such part thereof as they may think fit, and it shall contain a notice that in default of appearance they will be turned out of possession ; and the writ shall bear teste of the day on which it is issued, and shall be in force for three months, and shall be in the form contained in the Schedule (A.) to this Act annexed, marked No. 13, or to the like effect ; and the name and abode of the attorney issuing the same, or, if no attorney, the name and residence of the party shall be indorsed thereon, in like manner as hereinbefore enacted with reference to the indorsements on a writ of summons in a personal action ; and the same proceedings may be had to ascertain whether the writ was issued by the authority of the attorney whose name was indorsed thereon, and who and what the claimants are, and their abode, and as to staying the proceedings upon writs issued without authority, as in the case of writs in personal actions.

170. The writ shall be served in the same manner as an ejectment has heretofore been served, or in such manner as the Court or a Judge shall order, and in case of vacant possession, by posting a copy thereof upon the door of the dwelling-house or other conspicuous part of the property.

171. The persons named as defendants in such writ, or either of them, shall be allowed to appear within the time appointed.

[To be continued.]

## LAW OF EVIDENCE.

### PRODUCTION OF LETTERS.

In an action for an attorney's bill, the question was, whether the business had been done by the plaintiff, who was an attorney in London, for the defendant, who was a surgeon at Monmouth ; or whether the plaintiff had done the business as agent for the defendant's father, Mr. John Owen, who was an attorney at Monmouth.

On the part of the defendant, a letter of the plaintiff was given in evidence stating,—"I send you my bill of costs, as desired." On the part of the plaintiff, it was contended, that this letter was manifestly an answer to a letter of the defendant ; and that the defendant's letter should be put in.

*Parke, B., held*, that the defendant need not do so, but that the plaintiff might put in the defendant's letter to explain the letter of the plaintiff, which had been already put in, or might observe on its non-production. *De Medina v. Owen*, 3 Car. & K. 72.

## LAW RELATING TO TREATING.

MR. WARREN, in his valuable Treatise on Parliamentary Election Law, recently published, thus writes on the subject of treating :—

"Treating, the cognate offence to bribery, remains to be considered ; and, at the outset, it is to be observed that this branch of corrupt practices at elections is excluded from the Statute passed at the close of the late Parliament, and explained in the preceding chapter. When the Bill was taken up to the House of Lords, the sixth section, in defining the subjects of the Commissioners' inquiries, contained the words, 'or whether any corrupt practice, by way of treating, has been carried on at such election.' Those words, however, were struck out by the Lords, and the omission was subsequently assented to, though with some reluctance, by the Commons."

The learned author gives the following as the substance of the 22nd section of the 5 & 6 Vict. c. 102. :—

"If any member or candidate, directly or indirectly, by himself,—or by, or with, any other person,—or in any manner,—gives or provides,—or knowingly allows to be given or provided,—wholly, or partly, at his expense ;—or pays, wholly or in part, any expenses incurred for any meat, drink, entertainment, or provision, to or for any person, at any time ;

Either BEFORE, DURING, OR AFTER any such election ;—for THE PURPOSE OF CORRUPTLY INFLUENCING such person, or any other person,—or for the purpose of

CORRUPTLY REWARDING such or any other person,—for having *given*, or *refrained* from giving his vote, at any such election,—

He will be incapable of being ELECTED or of sitting in Parliament for the place where such TREATING took place, DURING THE PARLIAMENT for which such election was holden.

"The essence of the offence thus defined in such exact and comprehensive terms, consists in the *corrupt purpose*: that of corruptly influencing, or rewarding. And it is necessary to observe further, that 'by making it an ingredient in the offence, that the prohibited treating shall be 'wholly or partly at the expense of the candidate,' all treating by relations, political friends, or clubs, is at once excluded.' The treating, also, must be traced to the candidate or his agents: and several committees have insisted as proof that such treating was going forward, not merely with his knowledge, but at his *desire* and *charge*. Corruption, and agency, being thus the essential ingredients of the offence, and of the proof,—it would seem, that a candidate cannot be committed by reasonable and innocent *bond fide* refreshments and entertainments provided for voters, by others than himself or his agents: he and they being disconnected with it, and in no way contributing towards payment for it. Were it, indeed, to be otherwise, no one would dare ever to become a candidate; for his return would be at any moment at the mercy of friendly indiscretion on the part of others, who were acting entirely independently of him, and of their own mere good will."

Mr. Warren refers to the *Wigan* case, Barr. & Aust. 788, tried after the 4 & 5 Vict. c. 57, and 5 & 6 Vict. c. 102, as affording some idea of the disposition of Election Committees in reference to such matters:—

"Without having any formal committee, the members of the political party which supported the candidate, met at their usual place of resort, a news-room in an inn. It was there agreed that each ward should be canvassed by residents in it; and that breakfasts should be provided in each ward, for those who had promised, or for any likely to promise, their votes. Some of these breakfasts were ordered and paid for by such resident ward canvassers; others, by persons frequenting the news-room. The steward and solicitor of the sitting member's father frequented the news-room during the canvass; often accompanied the sitting member on his canvassing; and respectively ordered and paid for conveyances to bring voters to the poll. Many election expenses were charged by the landlord of the inn to the 'committee,' and persons frequenting the news-room. During the polling, refreshments were supplied from the inn to voters; and about twenty dined there after the poll was closed. The expense of this was paid by the

steward of the sitting member's father; who was also present at the drinking at other 'open houses' in the place. The sitting member himself was staying at his father's house, near Wigan, during the election; came to Wigan almost every day during the canvassing; and at the election addressed the people from the news-room in the inn. These facts were held not to invalidate the return of the sitting member, who was declared duly elected."

And in concluding this part of his work, the author observes that,—

"Cases of this description, however, may be said to lie on the dividing line between legality and illegality, or so very near to it, as to occasion lively anxiety to candidates and their friends long after their election is over, and until the critical day for challenging it is passed. It will be well for them, however, before entering into the excitement and hubbub of the contest, to ascertain as clearly as possible the state of the law with regard to treating; for it is possible that men of high honour, and who would scorn to resort to undue means to influence voters, may nevertheless, by one or two little acts of inadvertence, either by themselves or zealous but inexperienced friends, bring themselves unconsciously within the category of treating, and have afterwards the bitter mortification of being ousted from a well-won seat."

#### UNITED LAW CLERKS' SOCIETY.

[Concluded from p. 401.]

The *Chairman*, in responding to the toast, said, his friend, Mr. Bramwell, had known him so long, and had always behaved to him with such friendship and marked kindness, that he might be allowed to say that he attributed almost entirely to his partiality the kind expressions which he had used towards him on this occasion. His powerful talents, his practised habit of even presenting a bad cause in a good light, had rendered him more than a *Nisi Prius* advocate. He was fully conscious that he was wholly undeserving of the kind encomiums he had passed upon him. To those present, in many respects, was justly to be attributed the success which had attended his career, and on that ground, although he was undeserving in others he was worthy of their confidence. It was to him a source of great satisfaction to see so large and respectable an assemblage of his old friends upon that occasion. He took their attendance as a compliment. He assured them he should continue to look forward to their success with feelings of great anxiety, and should he be enabled hereafter to have the honour of attending them upon these anniversary festivals, he should not fail to assist with his presence this most meritorious Society. He could not resume his seat without doing himself the pleasure of announcing to them that that sincere friend of the Profession, Mr. Justice Coleridge,

deeply regretted his inability from ill health to attend that meeting, but at the same time had most kindly consented to preside at their next meeting. Thanking them sincerely for the compliment they had paid him, he begged leave to return them his sincere thanks and to drink their healths.

Mr. *Welsby* then rose and said, he considered it the highest honour to be permitted to propose to them the toast he was about to submit for their acceptance—the health of the Right Honourable Sir John Patteson. The interesting and touching address which they had heard from him to day would have convinced them that he retained possession of his intellectual faculties in all their vigour, and his moral excellencies in all their full development. It would be perfectly unnecessary in him to intrude upon them with any observations respecting the character of that Right Honourable Gentleman. In honour, ability, and integrity, he regarded Sir John Patteson as a model English Judge. It was a grievous thing to think that this country had been deprived of the services of so eminent a man by a mere bodily infirmity, while his mental powers remain perfectly unimpaired. He begged to call upon them to drink, with all the honours, the health of the Right Hon. Sir J. Patteson.

Sir John *Patteson* in returning thanks said, It was most gratifying to him that his health should individually be drunk. His friend, Mr. *Welsby*, had been kind enough to make some very flattering remarks with respect to his conduct whilst upon the Bench. Now, it was a very satisfactory thing for a Judge to conduct himself on the Bench, so as to obtain the goodwill of those not only attending the Court but who had known him otherwise. He became a Judge very early in his professional life. He had not been nine years at the Bar and was only 40 years of age; therefore he never had had an opportunity of leading at Nisi Prius, or showing whether he could do anything of that sort. He never had that opportunity, otherwise he was quite sure he would have failed in it altogether. His course in the Profession was that of Chamber counsel, drawing pleadings laboriously at Chambers, arguing special demurrers, and things of that kind. He did not think he ever led a cause in his life that was not an undefended one, except once, where he had all the Bar of the day laughing at him, on account of his being put into that peculiar situation. He should have been obliged, in the course of things, to have either taken or endeavoured to take the lead, or else to forfeit his rank, sink down, and get nothing at all. How that might have been it was entirely impossible for him to say, as the opportunity was never afforded him. He was taken away rather too soon to be tested, because nine years in the Profession as a barrister is not quite long enough to place a man in a leading position. The honour of the Bench was offered him, and he did not like to refuse it; for it was an object of high and laudable ambition to a lawyer, affording him, moreover, a certainty in case any event should

befall him, disabling him from following his Profession. It had pleased Providence, indeed, that such an event should occur to him. He was afraid he might have adhered to this Profession longer than he ought to have done. It was very difficult for a man to judge when his faculties were impaired—he did not mean his general faculties, but his sense and power of hearing, when he cannot do his duty fully and properly without the administration of justice being put in peril. He could not hear witnesses, and he could not hear counsel sometimes. His friend, Mr. *Bramwell*, he could always hear, and his friend Mr. *Welsby*; and as for the Lord Chief Justice, he heard every word that he said. Even in Westminster Hall there were certain persons who had not the power of throwing out their voices, and therefore he lost a certain portion of their arguments. Still he did not know that that would have been enough to have induced him to retire, for he knew what they ought to have said, and therefore might have judged of what they did say. But the difficulty of hearing the witnesses perpetually harassed and grieved him. Sometimes he thought they were contumacious, and would not speak out, which he was afraid betrayed him occasionally into a little temper. At length he could bear it no longer, but was obliged to retire. He was very sorry it had happened. He was greatly obliged to them for the way in which they had received his health. He took it as another mark of that friendship which had subsisted between them for years, and of the kindness he had ever received from them, particularly from the Lord Chief Justice and the Attorney-General, whose speech on the occasion of his (Sir John *Patteson's*) retiring from the Bench, had made a deep impression upon his mind—an impression which will remain upon it to his dying-day. He thanked them very kindly for the honour they had done him.

Mr. *Willcock*, Q. C., in proposing the toast, "The Bench, the Bar, and the Profession," said, that as one who had always taken a deep interest in the welfare of the Society, it had been a great source of gratification to him that they had never wanted the presence of some distinguished member of the Bench as their Chairman. On the present occasion they were peculiarly fortunate: they had been favoured with one of the most distinguished ornaments of the Bench as their Chairman, who had exemplified to them all the advantage of success with all the feelings of a generous mind, who had contributed most essentially to the welfare of this Society and encouraged them by his address and by his example. They were also honoured with the presence of a retired Judge, a gentleman who did honour to them by the urbanity he had displayed and the freedom with which he had told them the story of his professional life and the manner in which he had encouraged every one who heard him to cultivate principle and honest persevering industry. There was not one present who would not only readily join in the expression of a

servent hope that that Right Honourable Gentleman might enjoy in his retirement that health over which no man had command, but that he might be able to possess with the enjoyment of health all that comfort which might arise from a consciousness of having done that which was right, exemplifying the conscientiousness of his principles and the simplicity and purity of his life and manners. He was happy in alluding to the Bar, which was one portion of the toast he was about to submit to them. They had that day had the assistance of a representative from a collateral Bar (if he might use such a phrase). They had the presence amongst them of her Majesty's Advocate. In him they had not only an excellent representative of the Bar, but his presence was graced by the splendour of his donation. They had not only present to-day Patrons in great number, and he trusted they would increase every year, but he was happy to find that the Committee had been enabled to announce that the subscriptions of that Anniversary had exceeded those of any former year, amounting to 450*l.* and upwards. Mr. Willcock said his pleasure that day arose, not so much from the augmented amount of subscriptions, as from the presence of two such distinguished members of the Bench as those then present, and other Patrons of the Society, as affording an indication of its general prosperity, and as the stamp of approval which it fixed on their conduct. In proposing the toast, "The Bench, the Bar, and the Profession," he felt that its most important part was the welfare of that portion of the Profession which had to struggle through life under more arduous circumstances than those of the other branches of the Profession. It was a source of the greatest delight to him to find that their course had been progressive from the time when he first came amongst them. It showed that their conduct, which originally secured them friends, had uniformly tended to increase them. It showed the improvement in moral principle which the Society was producing among its members. He felt that one of the greatest advantages of the Society was, that by extending its influence they extended its numbers, and thus promoted the moral improvement and the comfort and happiness of the whole body of Law Clerks. He was quite sure of this, that in proposing the toast of "The Profession," no one of the distinguished Gentlemen around him would forget that branch of it, the Law Clerks; indeed forgetfulness was entirely out of the question. The Right Honourable Chairman and his Right Honourable supporter had told them that they had always entertained the highest degree of confidence in them; that they could bear testimony to the respectability with which the members of the Society conducted themselves; that it was to their energy and toil the successful barrister was indebted for his fame, and to them the Judge must look for the materials for justly deciding a case. The Bar was dependent in the highest degree upon the in-

tegrity, industry, and talent of those who constituted the members of the Society.

The *Queen's Advocate* (*Dr. Harding*), in returning thanks for the last toast, said—The Chairman had imposed upon him the high and distinguished honour of returning thanks to the meeting for the toast they had just drunk, "The Bench, the Bar, and the Profession." In pronouncing those three words in that assembly, the first question that occurred was, what would become of the Bench, what would become of the Bar, and what would become of the Profession without the Clerks? He could only say for one, that he had three respectable clerks who he hoped were in the room that evening, and if in the course of next year there should be any extraordinary event, he charged them to remember that the *Queen's Advocate* and his clerks dined with the United Law Clerk's Society at Freemason's Hall.—They were threatened with danger from opposite quarters. Some people supposed that the Bar would be ruined by the discovery of gold in California and Australia. He must say that in that awful state of society which that gold discovery had produced, when he heard of a Chief Justice making his own bed, and a bishop blacking his own shoes: perhaps nothing strikes us with such awe or gives us such an idea of the upturning of all society which must occur at Sydney or Melbourne, as what they would possibly do without the clerks who are gone to "the diggings." If, which God forbid, a gold mine were to be discovered in Blackheath or Kensington Gardens, imagine what would be the state of the law here. Why, the prosperity of England materially depends on the condition of its clerks. But he had no fears of any such discovery. More peril perhaps was to be apprehended from other quarters. With the notions of the common law improvement which prevail in some quarters, there is a probability, as our American friends say, of our being improved off the face of God's earth. He trusted these reformers would not succeed in carrying improvement to such a pitch. They might, however, draw some comfort from what had taken place with the amiable family of Six Clerks, who had retired with pensions for the term of their natural lives and seven years afterwards. If that was a specimen of what the United Law Clerks can accomplish for themselves, he looked upon it as a highly encouraging and most prosperous omen. He was happy to find that the subscriptions of the evening had been the largest of any preceding anniversary. They had heard from the Report how much money had been contributed by the Profession, the Bench, the Bar, and all its branches, even his own collateral branch, although he begged to say, that he was a member of both branches by consanguinity. He was at the Common Law Bar long before he ever dreamed of going into Doctors' Commons. He made that original mistake, but he set it right afterwards.

"Thebes did my green, my unknown youth engage,  
But I chase Athens in my riper age."

In Doctors' Commons they had some very creditable specimens of clerks. He was acquainted with two gentlemen, one occupying an office of the highest trust, and he was happy to say very well paid under the Crown; and another, whom he was proud to call his friend, who was very near the topmost branch of the Profession, who both began life in Doctors' Commons. He was happy to say that, as a representative of Doctors' Commons, he was not alone, but that other members of the collateral branch were there. In this double capacity, as a member of that body, as well as being connected with the common law in former years, he begged to return them thanks for the toast which they had so cordially drunk.

Mr. Henry Horne proposed the health of the trustees. The Gentlemen who were comprised in that toast had from the very earliest period of the Society taken the warmest interest in its welfare; they were Gentlemen, who, if they might not be called its founders, were among its earliest Patrons and supporters. Those Gentlemen continued to feel the same lively interest as ever in the Society, and not only gave it their countenance, but accepted the responsibility of the office of its trustees. He proposed to them the healths of Mr. Foss and Mr. Bigg; the former of those Gentlemen, after a long business life spent in the toils of his Profession, was now enjoying the fruits of his well-earned exertions in retirement, but was so far mindful of their interests and attached to the Profession, that in his retirement he was employing himself in the literary labour of writing a biography of our lawyers and the early history of our Judges. Both of those gentlemen continued to express themselves interested in the welfare of the Society of which they were Patrons and promoters. Certainly he might say that no persons more than themselves knew what it was to appreciate the merits and services of the Law Clerks. Those Gentlemen knew that to the Law Clerk was confided the honour, reputation, character, and happiness, and he might say liberty of their clients, and those gentlemen would testify that that confidence was rarely if ever abused. Speaking for himself, he might be permitted to say that it was scarcely possible for a clerk properly to perform his arduous and responsible duties, unless his mind was disengaged from that painful and distressing reflection, that if disease should overtake him or the hand of death strike him down, those who were nearest and dearest to him would be subject to penury and privation. That that important fact was in the contemplation of those who founded this Society is perfectly evident. They had placed this Society on what might be called a simple well-settled basis. Its scale of relief and assurance as a friendly Society was founded upon nice, just, and accurate calculations on the one hand, and on the other it was supported by voluntary benevolence cheerfully and willingly rendered. That benevolence, he took the liberty to repeat, in the language of the Lord

Chief Justice, was as laudable to the giver as it was to the receiver. It evinced on the part of him who gave a just and proper sense of the services of the clerk who was his faithful, active, and zealous coadjutor, and he might say his friend; and, on the other hand, it was calculated to inspire that clerk with a desire to perform the duties of his situation in an efficient manner, and afforded the best possible stimulus to him to persevere in the path of integrity and good conduct he had hitherto pursued. With these remarks he begged to propose to them the health of "The Trustees of the Society, Mr. Foss and Mr. Bigg."

Mr. W. Rogers said, he had been called upon in behalf of their absent friends, the Trustees, to acknowledge the toast just drunk. He was going to praise his friends, but he was sure that any need of praise from him was unnecessary, still it would be ungrateful in him were he to omit it. If anything were required to show the soundness of the Society, it was the fact of its having as Trustees two such gentlemen as those whose names had been introduced to their notice; men who had realised their position of honour and advantage from the Profession to which they all belonged, and for the success of which they must all be so interested. He should be most happy, on all occasions, to appear for his excellent friends who were not there, but he thought he should not be doing any more than his duty in saying, that unless at their next Annual Meeting they appeared here themselves, they must show good cause for their absence. He was an old-fashioned fellow, and he liked practical remarks; he wished to impress upon the gentlemen here the importance of going themselves, and seeing how this Society worked; he was afraid many had not followed out that suggestion, but he had been himself and had been delighted with the care intelligence and activity with which the affairs of the Society were carried on. Last year, they had the honour of being presided over by a distinguished Equity Judge, and were honoured with the presence of the other Equity Judges and of several members of the Equity Bar. This year they have had the honour of a splendid phalanx of the Common Law Judges and Bar. Next year, he trusted, they would follow out an old practical suggestion, and let them have an amalgamation of both Common Law and Equity, he was sure he should only express the feelings of the Meeting when he said, that they hoped most sincerely that the highly respected and highly popular Judge who had now retired from the Bench which he had so long graced would gratify his friends by coming among them as long as he was spared which he trusted might be many many years to come. The Right Honourable Gentleman, Sir John Patteson, most kindly says, it would give him great pleasure to come, if even he were obliged to come up from Devonshire on purpose. He hoped also that their collateral kinsman, the Queen's Advocate, would find it convenient to come again. There were some

valuable suggestions made last year by the Lord Chief Justice Bruce, he hoped every one of the gentlemen he had mentioned would consider it a duty to be present on the next occasion. He knew a gentleman who for sixty years was never absent from the anniversary of a great benevolent Society, he hoped this Society would hereafter number among its friends those "grave and reverend Judges," those "grave and pensive Serjeants," those "gay Proctors," and those "intelligent, active, and thriving Attorneys," to whom the Right Honourable Judge who presided last year referred, and if these unite with the members of the Society whose excellent qualities and useful examples had been so well dilated upon, nothing remained for the Society but prosperity. That this might be the case, he was sure was the wish of every person there. Having taken that old Irish mode of going out of his way, he then returned to the record, and to such a record as he was sure it would always be great gratification for him to respond to, he begged to return them thanks on behalf of his absent friends whose healths they had drunk.

Mr. Davidson proposed the last toast of the evening—He said that the Profession of the law was no doubt a noble Profession, especially if you had plenty of practice—he firmly believed, at all events he said this seriously, that that was one of the most useful societies that was ever established. But his object in rising then was to propose that which had been the theme, the pride, and admiration of all Professions, and of all societies, and of all nations, and of all ages, "The Ladies;" he believed if there was any Profession which, rather than another, it was essential that every follower of it should have the advantage of domestic bliss, it was the Profession of the Law, that when the man who follows it goes home, he should find some one to cheer him in his course and solace him after his labours. He certainly was at a loss to conjecture, why he above all men should have been selected for this distinction, the distinction of proposing this toast, not being a *united* clerk, nor in any sense a ladies' man, unless it be that he had the misfortune of being an old bachelor, and their worthy secretary thought that he might turn this *inutile lignum* to some account, by showing him up as an aged monster of celibacy, to warn and discourage all others against the miseries of single unblestness. Certainly, if the absence of domestic comfort might be supposed to qualify a man for the honour of proposing such a toast, he might say, by sad experience, that he felt qualified, and that he was as well qualified for the honour as any man living. If by any chance it should happen that he should find himself at home with a bad headache, there was no one there to make tea for him, and with her fair hand to pour it out in the large cup. If with good friends, after enjoying so excellent a dinner and such delightful society as that, he should go home with the headache, he must sleep upon it as well as he could, and perhaps

wake up no better next morning. But it would tend to no good for him to occupy their time with vain repining and unavailing regrets, it was obviously too late for him to look forward, and it was useless to look back, but still he might in his generation be of some use. Might he venture to offer a few words of advice to the rising generation? he begged to say to them, do not waste your youth—take time by the love-lock—do not postpone your happiness till the morrow, or you may be a day after the fair, and rue it for the rest of your lives.

## NEW ORDERS IN CHANCERY.

### PAYMENT OF FEES BY STAMPS.

7th September, 1852.

*In the matter of the Suitors of the High Court of Chancery.*

I, the Right Honourable Edward Burtonshaw, Lord St. Leonards, Lord High Chancellor of Great Britain, do hereby, in pursuance of an Act of Parliament passed in the 16th year of the reign of her present Majesty, intituled "An Act for the relief of the Suitors of the High Court of Chancery," order that certain fees payable in relation to proceedings in the Court of Chancery shall, on and from the 28th day of October next and thenceforth, be collected by means of stamps to be provided and used as by the said Act is directed, and that the stamps for denoting the payment of the said fees shall be of the amounts set forth in the Schedule hereto annexed. And I do further direct, that this Order be communicated to the Commissioners of Inland Revenue, so as that the said Commissioners may give the necessary directions for carrying the same into effect as is provided by the said Act. And I do further direct, that the said Commissioners of Inland Revenue shall, once in every month, cause to be paid into the Bank of England to the credit of the Accountant-General of the Court of Chancery, to be placed to the account there intituled "The Suitors' Fee Fund Account," such sums of money as may have been received by them for the stamps hereinbefore mentioned, after deducting the costs, charges, and expenses incurred by them, or by their direction, in carrying such order into effect, and all sums of money repaid on allowance for spoiled stamps, and that notice of each such payment shall, at the time of making the same, be given by the Commissioners of Inland Revenue to the Accountant-General of the Court of Chancery, who shall certify the amount of such payment to the Court. And let this Order be drawn up and entered by the Registrar of the said Court.

(Signed) ST. LEONARDS, C.

### Schedule.

One penny; four pence; six pence; one shilling; one shilling and six pence; two shillings; three shillings; four shillings; five

shillings; ten shillings; one pound; two pounds; three pounds; four pounds; five pounds; ten pounds.

**TRANSFER OF CAUSES FROM THE LATE VICE-CHANCELLOR PARKER.**

28th August, 1852.

Whereas the Vice-Chancellor Sir James Parker hath departed this life. And whereas it is necessary to make immediate provision for the hearing of any urgent applications in the causes and matters which at the time of the death of the said late Vice-Chancellor were attached to the Court of the said late Vice-Chancellor: Now, I, the Right Honourable Edward Burtenshaw, Lord St. Leonards, Lord High Chancellor of Great Britain, do hereby order and direct that applications in any causes or matters attached to the Court of the said late Vice-Chancellor Sir James Parker may, until his successor shall be appointed, be heard and disposed of by the Right Honourable the Vice-Chancellor Sir George James Turner, or the Honourable the Vice-Chancellor Sir Richard Torin Kindersley, in the same manner in all respects as if such causes and matters had been originally attached to the Court of the Vice-

Chancellor Sir George James Turner, or to the Court of the Vice-Chancellor Sir Richard Torin Kindersley: Provided always, that when such successor shall be appointed, any decree or order made by either of the said Vice-Chancellors in pursuance of this Order shall, in all future proceedings in the cause or matter be deemed to be the decree or order of such successor in all respects.

(Signed) ST. LEONARDS, C.

**DISSOLUTIONS OF PROFESSIONAL PARTNERSHIPS.**

*From Aug. 24th, to Sept. 17th, 1852, both inclusive, with dates when gazetted.*

Bendle, Robert, Joseph Bendle, and Thomas Wright, Carlisle, Attorneys and Solicitors. Sept. 14.

Dunster, William Hilliard, and Augustus Booker, 3, Henrietta Street, Cavendish Square, Attorneys and Solicitors. Sept. 7.

Parker, William Broome, and Isaac Hall, Manchester, Attorneys and Solicitors. Sept. 7.

Savery, Charles, Edward Clark, James Flower Fussell, and Foskett Savery, Bristol, Attorneys and Solicitors, (so far as regards the said Foskett Savery). Aug. 31.

**RECENT DECISIONS IN THE SUPERIOR COURTS.  
AND SHORT NOTES OF CASES.**

**Lord Chancellor.**

*Garden v. Ingram.* July 27, 1852.

**MORTGAGOR AND MORTGAGEE. — RECEIPT FOR AMOUNT OF POLICY OF INSURANCE. — CLAIM.**

*Held, dismissing with costs an appeal from Vice-Chancellor Knight Bruce, that the mortgagor of premises which had been burnt down, was bound to join in a receipt for the amount of the policy of insurance, and, on his refusal, an order was made on him to join in such receipt, upon the claim of the mortgagee.*

THIS claim was filed by the mortgagee, to compel the mortgagor of a house, which had been destroyed by fire, to join in the receipt for the amount insured. It appeared the defendant paid the premiums and had expended money on the premises since the fire. The Vice-Chancellor Knight Bruce having made the order as asked, this appeal was presented.

*Terrell in support; Rogers, contra.*

The Lord Chancellor said, that the mortgagor insured for the benefit of the mortgagee, and he was therefore compellable to concur in a receipt for the amount of the policy, and he could not object on the ground of his having laid out money since the fire, as the rebuilding was for his benefit. The appeal would therefore be dismissed with costs.

**Lords Justices.**

*In re Birmingham, Oxford, Reading, and Brighton Railway Company, ex parte Thorn; In re Same, ex parte Onions.* Aug. 5, 1852.

**WINDING-UP ACT.—CONTRIBUTORIES, LIST OF.—COSTS.**

*Where names had been placed on the list of contributors in accordance with Upfill's case, 2 H. of L. 674, held, that they were entitled to move to have their names withdrawn, and to have their costs paid out of the estate, upon the overruling decision of the House of Lords, in Bright v. Hutton, ante, p. 264.*

THIS was a motion to remove the names of Mr. Thorn and Mr. Onions from the list of contributors to the above company, on which they had been placed in accordance with the decision in *Upfill's case*, 2 H. of L. 674, upon the overruling case of the House of Lords of *Bright v. Hutton*, ante, p. 264.

*Daniel in support, asked that the costs of the application might come out of the estate.*

*Roadburgh* for the official managers, contra, as to costs.

The Lords Justices said, the applicants were entitled to have their names removed from the list, and to have their costs out of the estate, and the official managers, of companies should look through their lists and remove or give

notice of removing the names of persons who were no longer liable under the decision of *Bright v. Hutton*.

### Master of the Rolls.

*Wilson v. Eden*. July 9, 12, 13, 1852.

WILL.—CONSTRUCTION.—DEVISE.—LEASE—HOLDS.

*A testator devised all and singular his manors, lordships, rectories, advowsons, messuages, lands, tenements, tithes, and hereditaments at A., and all other his real estates in the county and elsewhere in Great Britain, and all his estate and interest therein: Held, confirming the certificate of the Courts of Queen's Bench and Exchequer, that under the 1 Vict. c. 26, s. 26, the leasehold property passed under the devise.*

THE testator, Sir Robert Johnson Eden, by his will, devised all and singular his manors, lordships, rectories, advowsons, messuages, lands, tenements, tithes, and hereditaments, situate near Windlestone, in the county of Durham, St. Helen's, Auckland, and Bishop Auckland, and at Brignal, Yorkshire, and all other his real estates in the said counties of Durham and Yorkshire, and elsewhere in Great Britain, and all his estate and interest therein.

An issue having been directed by the late Master of the Rolls to the Court of Exchequer, who certified that the leasehold estate passed under the devise, and on a reference to the Court of Queen's Bench that certificate had been confirmed. The matter now came on upon the equity reserved and costs.

*Elmsley and Giffard* for the plaintiff, *Malins and Dumergue* for the defendant; *Roupell, R. Palmer, Welford, and Dickenson* for other parties.

The Master of the Rolls held, that the leaseholds passed under the devise according to s. 26 of the 1 Vict. c. 26, and affirmed the certificates of the Courts of Queen's Bench and Exchequer accordingly—the costs of all parties to come out of the estate.

### Vice-Chancellor Turner.

*Tidd v. Lister*. June 25, 1852.

MARRIED WOMAN.—INSOLVENT HUSBAND.—EQUITY TO SETTLEMENT.—REDUCTION INTO POSSESSION.

*Certain property which had been left to E. T., for life, had been assigned for valuable consideration by her husband, who afterwards became insolvent. A receiver was appointed of the property, who was directed to apply the money to be received in payment of the husband's incumbrances: Held, that the husband had reduced the property into possession, and that the wife, who survived him, was not entitled to maintenance out of the property upon being left destitute, nor to a sum in the receiver's hands at the husband's death.*

ELIZABETH TIDD was entitled to a life interest in certain property under a testator's will, and had married Mr. Tidd, who assigned his interest in his wife's property for value, and afterwards became insolvent. It appeared that a suit had been instituted to administer the property, and a receiver appointed to apply the money to be received in payment of the husband's incumbrances. The wife, having been left destitute, presented a petition, claiming to be entitled to maintenance out of the property as against the assignee, but it was directed to stand over to the hearing of the cause. The husband then died, and the wife again petitioned, and claimed by survivorship a sum remaining in the receiver's hands.

*Cur. ad. vult.*

The Vice-Chancellor said, that the appointment of the receiver with a direction to apply the money in his hands to the payment of the husband's incumbrances amounted to a reduction into possession, and that the petition must therefore be dismissed.

### Vice-Chancellor Parker.

*Torrington v. Bowman*. August 4, 1852.

WILL.—CONSTRUCTION.—“REAL EFFECTS.” ESTATE IN FEE.

*A testator gave all the residue of his effects, either real or personal, to his daughters, share and share alike; and he also gave all his lands in the county of K. and elsewhere, with all his personal estate, to trustees in trust for the purposes of his will: Held, on special case under the 13 & 14 Vict. c. 35, that the daughters took an equitable, and the trustees a legal, estate in fee.*

RICHARD SEK, by his will, dated in July, 1795, after directing the payment of certain pecuniary legacies, gave all the residue of his effects, either real or personal, to his daughters, Elizabeth and Catherine, share and share alike; and in a subsequent clause, he gave all his lands in the county of Kent and elsewhere, with all his personal estate, to the three trustees therein named, their heirs and assigns, in trust for the purposes of his will.

This was a special case under the 13 & 14 Vict. c. 35, upon the construction of the will.

*Bacon and Pownall* for the plaintiffs; *Makins and W. D. Lewis* for the defendant.

*Knight v. Selby*, 3 Scott, N. R., 409; *Challenger v. Sheppard*, 8 T. R. 597; *Jackson v. Hogan*, Cowp. 299; 3 Bro. P. C. 389; *Doe dem. Haw v. Earles*, 15 M. & W. 450, were cited.

The Vice-Chancellor held, that the daughters took the equitable, and the trustees the legal, estate in fee.

### Court of Common Pleas.

*Dalton v. Midland Counties Railway Company*. June 12, 1852.

INTERPLEADER.

*Certain stock in a railway company was*



transferred to the plaintiff, and the same stock was afterwards transferred to another person, but it was alleged by means of a forged signature of the plaintiff's name. A rule obtained by the company for an interpleader, and to stay an action to recover the amount of dividend on the stock, was discharged.

THIS was a rule nisi obtained on June 8 last, for an interpleader and to stay the proceedings in the action brought by the plaintiff against the defendants, to recover the amount of dividends due on stock in their company. It appeared that 400*l.* consolidated stock had been transferred to the plaintiff on April 30, 1850,

and that in August following a transfer of the same stock was made to a Mr. Estling, on the signature of the plaintiff, which was, however, alleged to be a forgery.

*Wordsworth* for the plaintiff, and Gray for Mr. Estling, showed cause against the rule, citing *James v. Pritchard*, 7 M. & W. 216; *Turner v. Mayor of Kendal*, 13 M. & W. 171.

*Bovill* for the company, in support.

The Court said, that the company did not stand in the position of an uninterested party, and that the case was not within the Interpleader Act, and the rule was accordingly discharged.

## ANALYTICAL DIGEST OF CASES, REPORTED IN ALL THE COURTS.

### Courts of Equity.

[For the previous Sections of the Digest in this Volume, see

*Privy Council*: Appeals, p. 17.

*House of Lords*: Appeals, p. 38.

#### Courts of Equity:

Law of Attorneys and Solicitors, p. 125.

Contributories under the Winding-up Act, p. 143.

Law of Trustees, p. 165.

Lunacy, p. 185.

Law relating to Infants, p. 186.

Law relating to Charities, p. 203.

Appeals in Bankruptcy, p. 225.

Construction of Statutes, pp. 104, 286, 306, 325.

Law of Wills, 346, 367, 386, 406.]

### LAW OF HUSBAND AND WIFE.

#### ADMINISTRATOR OF DECEASED WIFE.

*Suit against trustee of stock belonging to wife.*

—*Legatees*.—A married woman invested a sum of 525*l.* stock, out of moneys which she had as pin-money to her separate use, in the names of trustees, in confidence that the fund should be held by them in trust for such persons as she should direct or appoint. She afterwards made a will, giving the interest of the money she had in the stocks to her servant maid for life, and afterwards to the poor of certain parishes. The wife having died, administration with the will of his deceased wife annexed was granted to her husband. To a bill filed by the husband alone, as such administrator, against the surviving trustee of the stock, the defendant, by her answer, suggested that the legatees under the will were necessary parties; but the Court, without requiring the legatees to be parties to the suit, ordered payment of the stock to the plaintiff, with costs. *Musters v. Wright*, 2 De G. & S. 777.

#### ANTE-NUPTIAL SETTLEMENT.

"*Shall become entitled*."—Does not include present property.—A covenant in an antenuptial settlement, that all the personal estate

"to which the wife shall become entitled" should be subject to the trusts of the settlement: *Held*, not to extend to property to which, without the knowledge of the intended husband or the trustees, she was then absolutely and immediately entitled. *Otter v. Melvill*, 2 De G. & S. 257.

#### ANTICIPATION DURING COVERTURE.

*Power to charge for portions*.—Under a power to charge an estate with a sum not exceeding 1,000*l.*, for the portion or portions of a younger child or younger children, the donee of the power appointed the 1,000*l.* to a married daughter for her separate use, with a restraint upon anticipation during the coverture; and it was held, that the interest of the appointee might lawfully be so restricted by the terms of the appointment. *Dickinson v. Mort*, 8 Hare, 178.

#### APPOINTMENT.

*In execution of power*.—*Absence of reference*.

—Stock, over which the testatrix had a power of appointment, held to be described and appointed by a will, in which the power was not expressly referred to.

On a question, whether a power has been executed by a will, evidence of the state of the property is admissible, so far as it is material to the question, whether a particular part of such property is or is not described by the will; but, unless the circumstances of the property, when known, are found to exclude the primary and strict sense of the words which the testator has used, such strict sense must be adhered to; and the mere probability, however strong, that the words were used in a secondary sense, does not authorise the Court so to construe them.

A disposition of trust funds, over which the testatrix had a general power of appointment, not pursuing the formalities prescribed in the power, held to be, nevertheless, a good appointment in favour of a charity. *Sayer v. Sayer*, 7 Hare, 377; *James v. Same*, ib. 377.

Cases cited in the judgment: *Nunneke v. Horton*, 7 Ves. 399; *Pocock v. Bishop of Lincoln*, 3

B. & B. 27; Doe d. Oxenden v. Chichester, 4 Dow. 65; Piggot v. Penrice, Prac. in Ch. 471; Comyns, 250.

#### CHOSE IN ACTION.

1. *Covenant to settle*.—By a marriage settlement, it was expressed to be agreed between the parties thereto, and the husband covenanted, that if any personal property should, during coverture, come to or vest in the wife, or in him in her right, the same should be transferred, by all proper parties, upon the trusts of the settlement. The wife became entitled to a reversionary interest in a *chose in action*, which did not fall into possession until after the death of the husband: *Held*, that the wife was bound to settle it. *Butcher v. Butcher*, 14 Beav. 222.

2. *Marriage articles*.—A lady married before she attained 21, and by her marriage articles, she and her husband covenanted to assign a trust fund, in which she had a reversionary interest, to trustees, in trust for her and her husband and the children of their marriage. A bill, for a specific performance of the articles, filed by the children against their father and mother, after the mother's interest had become an interest in possession, but whilst the fund remained outstanding, was dismissed. *Borton v. Borton*, 16 Sim. 552.

3. *Reduction into possession*.—*Settlement*.—A female infant being entitled, under a will, to 1,000*l.*, and to the reversion of 2,000*l.*, expectant on her father's death, covenanted with the trustees of her marriage-articles, to do all necessary acts, when she should attain 21, for vesting those sums in the trustees, upon the trust of the articles. Shortly before the infant attained 21, the executors of the will, without any direction from her or her husband, transferred a sum of stock in which the 1,000*l.* had been invested, to the trustees of the articles. Afterwards the husband died, leaving his wife and her father surviving.

*Held*, that the transfer to the trustees, was a reduction into possession, and, therefore, that the 1,000*l.* was bound by the articles; but that the wife was entitled, by survivorship, to the 2,000*l.*, subject to her father's life interest. *Cunningham v. Antrobus*, 16 Sim. 436.

#### CLANDESTINE MARRIAGE.

*Description of wife by maiden name*.—In a bill, purporting to be exhibited by an infant plaintiff by her next friend, she was described by her maiden name, but was, in fact, clandestinely married. The Court refused, on motion made on behalf of the husband (a defendant), to have the bill taken off the file. *Worthington v. Pemberton*; *Newenham v. Pemberton*, 1 De G. & S. 644.

#### CONSENT OF WIFE.

1. *To part with reversionary interest*.—The Court cannot take the consent of the wife to part with her reversionary interest. *Osborn v. Morgan*, 9 Hare, 434.

2. *To part with reversionary interest*.—*Fine at law*.—The consent of the wife taken in a Court of Equity to part with her interest in property about to be distributed, is not analo-

gous to a fine at law with respect to real estate. *Osborn v. Morgan*, 9 Hare, 435.

#### COVENANT.

*To settle equal share of covenantor's estate on daughter*.—A father, upon the marriage of his daughter, covenanted with the husband, his executors, &c., by deed or will, to give, leave, and bequeath unto his (the covenantor's) daughter an equal share with his other children of all the real and personal estate of which he should die seised or possessed. The daughter died in the lifetime of the father, and the father, having made some disposition of property in favour of a son in his lifetime, by his will devised and bequeathed his real and personal estate for the benefit of his widow and surviving daughters: *Held*, by the Court of Common Pleas, and by this Court concurring in the certificate, that the husband and covenantor had not, under the circumstances, any good cause of action against the executor of the father; and that, if the father had died possessed of no personal estate, the husband could not have recovered any substantial damages in such action. *Jones v. How*, 7 Hare, 267.

Case cited in the judgment: *Laughter's case*, 5 Rep. 21.

#### ELECTION.

*Conversion*.—*Articles on marriage*.—By a marriage settlement, dated 21st September, 1778, on the marriage of William, afterwards Earl Harcourt, 32,000*l.* was directed to be invested in land which was to be conveyed to the use of the husband for life; to the use that the wife might receive a jointure of 300*l.* a year; to the use of trustees for a term to secure the jointure, and to raise 5,000*l.* for the wife after the husband's death; to the use of trustees for another term, to raise portions for the children of the marriage, and to the use of the husband's right heirs. There never was any issue of the marriage. The trustees invested 20,000*l.* of the 32,000*l.* on mortgage, and the rest in the funds. In 1823, the husband made a statement of his personal property, in which he included both the mortgage-money and the stock. In 1829, he and the mortgagee and one of the trustees executed a deed by which the mortgage-money, as well as the interest of it was treated as payable to him, his executors or administrators, and by which he covenanted that the principal should not be called in for five years by him, his executors or administrators, or by the trustees, in case the interest should be regularly paid. Afterwards, in the same year, he made his will, by which he made a provision for his wife (which she accepted) in satisfaction of the provision made for her by the settlement; and devised all his real estates to trustees, in trust, to convey them to certain of his relations for their lives, successively with remainders to their first and other sons in tail male, and, ultimately, to his own right heirs: and he gave 80,000*l.* to the same trustees, and directed them to invest it in land, and to settle the land in the same manner as he had directed

his real estates to be settled. He died in 1830.

*Held*, that he had elected to treat and had treated, the 32,000*l.* as part of his *personal estate*, and that it remained personalty at his death. *Harcourt v. Seymour*, 2 Sim. N. S. 12.

#### EQUITY TO SETTLEMENT.

1. *Necessities of wife and children.*—The rule of the Court of Equity which entitles a married woman to a settlement out of her equitable interest, is not limited by the necessities of herself and children. *Carter v. Taggart*, 5 De G. & S. 49.

2. *Right of children to, where mother died before answer.*—The children of a married woman, a defendant in a suit for the administration of an estate in which she was interested, are not entitled to a settlement out of their mother's share of the fund which is recovered in the cause after her death, although the mother died without putting in her answer in the cause, and therefore, without any opportunity of claiming her equity to a settlement. *Baker v. Bayldon*, 8 Hare, 210.

Cases cited in the judgment: *Steinmetz v. Halabin*, 1 Gl. & Jam. 63, 66; *Lloyd v. Williams*, 1 Madd. 450; *De la Garde v. Lempriere*, 6 Beav. 344.

3. *Reversionary interest.*—The obligation imposed upon a husband, suing for the property of his wife, of doing equity by making a settlement, is not enforced by the Court upon the bill being filed, nor upon the decree being made, where the interest is in reversion (for the Court only deals with the interest in possession); but the obligation is enforced when the property comes to be distributed. *Osborn v. Morgan*, 9 Hare, 432.

Cases cited in the judgment: *Woollands v. Crowcher*, 12 Ves. 174; *Pickard v. Roberts*, 3 Madd. 384.

4. *How exercised.*—The wife's equity for a settlement does not depend on any right of property in her, but rests on the control which the Courts of Equity exercise over property falling under their dominion. *Osborn v. Morgan*, 9 Hare, 432.

5. *To what attaches.*—The right to a settlement is an obligation which the Court fastens, not upon the property, but upon the right to receive it. *Osborn v. Morgan*, 9 Hare, 432.

#### FEME COVERT.

1. *Domiciled in Scotland, entitled to produce of real estate.*—*Order for conveyance to husband in fee.*—A *feme covert*, domiciled with her husband in Scotland, was entitled to the produce of a real estate in England directed to be sold. Upon proof that, by the law of her domicile, her personal estate vested absolutely in the husband, and that she had no equity to a settlement, the estate, being unsold, was directed to be conveyed to the husband in fee. *Hitchcock v. Clendinen*, 12 Beav. 534.

2. *Payment of two-thirds of income to, where husband bankrupt.*—The dividends of stock standing in the Accountant-General's name, to which a woman was entitled for life at the time of her marriage, were ordered to be paid to her

husband during her life, or until further order. Some time afterwards, the husband deserted his wife, and became bankrupt, having previously possessed himself of 2,000*l.*, to which she was absolutely entitled.

The Court ordered two-thirds of the dividends to be paid to the wife, and the other third to the husband's assignees. *Vaughan v. Buck*, 1 Sim. N. S. 284.

3. *Attachment.*—*Contempt.*—Attachment for want of answer ordered, *ex parte*, against a *feme covert*, who had appeared and was at liberty to answer separate from her husband. *Taylor v. Taylor*, 12 Beav. 271.

#### FRAUD ON MARRIAGE CONTRACT.

*Evidence of engagement to marry preceding contract.*—*Notice to husband of marriage.*—On the 16th of May, 1846, a widow made an improvident settlement of a large portion of her property, and married on on the 15th of October, following. The husband and wife filed a bill praying that the deed might be set aside as a fraud on the marital right. *Semble*, that the Court would have given relief, notwithstanding the wife was a co-plaintiff, if an engagement to marry preceding the transaction, and a subsequent marriage without notice to the husband, were proved; and the Court offered the plaintiff an issue to try the fact. *Griggs v. Stapler*, 2 De G. & S. 572.

#### INSOLVENT.

*Settlement of all future property.*—*Settlement on marriage.*—Articles were executed previous to a marriage, by which the husband and wife agreed, that all property, estate and effects to which the husband or wife might thereafter become entitled, should be settled to such uses as the wife should appoint; and, in default, on trusts for the husband, wife, and children. At the time, neither husband nor wife had any property,—the husband was insolvent, and soon after the marriage took the benefit of the Insolvent Act. Property subsequently descended on him: *Held*, as against his assignees, that it was bound by the articles. *Hardey v. Green*, 12 Beav. 182.

#### MARITAL RIGHT.

1. *Settlement when not in fraud of marital right.*—Where a husband, before his marriage, had sufficiently early notice that it was intended to settle the bulk of the intended wife's property, and nothing passed to justify a belief, on the husband's part, that, at the time of the marriage, no such settlement had been made: *Held*, that the husband was not entitled to set aside a settlement, which it appeared had been made before the marriage, although he was not party to it, and was not proved to have been actually cognizant to any settlement having been made. *Wrigley v. Swainson*, 3 De G. & S. 458; *Same v. Wrigley*, *ib.*

2. A Court of Equity will not lend itself as an instrument to enable a husband to acquire a right in his wife's property, which he has no means of acquiring at law. *Osborne v. Morgan*, 9 Hare, 435.

[To be continued.]

# The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

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SATURDAY, OCTOBER 2, 1852.
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## SUMMARY OF ALTERATIONS IN CHANCERY PRACTICE.

On the passing of the three New Chancery Acts, we took occasion to notice the general alterations which they effected, both in the jurisdiction and in the course of proceeding, in the Courts of Equity.<sup>1</sup> It may now be useful to state some of the principal details,—as well for the information of the Practitioner as the Student. We had intended to arrange the changes which have taken place under the heads,—1st, of proceedings which have been *abolished*; 2nd, of the *alterations* in the practice; and 3rd, of the *new* jurisdiction and course of proceeding directed by the Acts; but we find that these several branches are so blended together that it would be difficult, and perhaps not advantageous, to separate them. Our materials, therefore, will be arranged in the usual order of a suit in Chancery, and we commence with the subject of "Parties," in which great improvement has been effected, and the power to administer estates summarily.

### I. OF PARTIES TO SUITS.

No objection can be taken for want of parties in the cases to which the following rules extend:—

1. In suits by residuary legatee or next of kin.
2. In suits for legacies charged upon a person interested in proceeds of real estate of a deceased person.
3. In suits by a residuary devisee or heir.
4. In suits by *cestui que trust* under deed.
5. In suits for protection of property pending litigation, and for waste.
6. By an executor, administrator, or trustee, for administering an estate or executory trusts.

7. Power given to Court in the above cases to require other persons to be made parties, and to deal with the conduct of a suit and costs.

8. In the above cases notice of decree to be served on all persons now necessary parties.

9. Provides for the representation of persons beneficially interested in real estate by trustees (15 & 16 Vict. c. 86, s. 42).<sup>2</sup>

The Court may also proceed in any suit, where there is no representative of a deceased person interested, without such representative, or may appoint one; s. 44.

The suit cannot be dismissed for misjoinder of plaintiffs, but the Court may modify its decree; s. 49.

*Summary administration of personal estate.*—A creditor or legatee may, without bill, summon an administrator to show cause at Chambers why an order for the administration of the personal estate of the deceased should not be granted, and power is given to the Judge to order the administration of such estate; s. 45.<sup>3</sup>

*Administration of real estate.*—A creditor or person interested may also obtain an order for the administration of the real estate of a deceased person where it is vested by devise in trustees for sale, with power to give receipts; s. 47.

### II. OF BILLS AND CLAIMS.

*Printing bills and claims.*—Engrossing bills on parchment is abolished, and a printed bill is to be filed instead (15 & 16 Vict. c. 86, s. 1).

Writs of subpoena and summons also are abolished; s. 2.

The defendant is to be served with a

<sup>1</sup> Setting down causes on an objection for want of parties is abolished; s. 43.

<sup>2</sup> *Lis pendens.*—Duplicate of summons to be filed in Record Office; s. 46.

<sup>1</sup> See pp. 229, 249, 269.

printed bill in lieu of the writ of subpoena and summons; s. 3.

The filing and service of a printed bill or claim is to have the same effect as the filing and issuing of writs of subpoena and summons; s. 4.

*Mode of service.*—A printed bill is to be served in the same manner as the subpoena is now served; s. 5.

And written copies of bills may be served in cases of injunction, *ne exeat regno*, and appointment of ward of Court, upon the plaintiff undertaking to file a printed copy in 14 days; s. 6.

The plaintiff is to deliver printed copies of the bill or claim at the rate prescribed by the Lord Chancellor; s. 7.

*Amendments.*—The provisions as to filing, &c., prints of original bills are also extended to amendments; with a proviso as to amending the printed copy by written alterations.

The Lord Chancellor has power to discontinue or suspend the clauses as to printing; s. 8. And to revive the present practice as to filing bills, &c.; s. 9.

*Form of bills.*—They are to contain concise narratives of material facts, divided into numbered paragraphs, without interrogatories; s. 10.

*Authority to file bill.*—The person whose name is used as next friend of an infant or married woman must sign a written authority; s. 11.

*Abated suits and supplemental matter.*—An order may be made which shall have the same effect as a bill of revivor, or of the usual supplemental decree; s. 52.

And facts occurring after the commencement of a suit may be introduced as amendments to the bill; s. 53.

### III. OF ANSWERS.

Interrogatories may be filed in the Record Office by the plaintiff, within a time to be prescribed; s. 12.

Defendants may answer within limited time, though not required so to do by plaintiff, without leave; after that time the defendant must have leave; s. 13.

The defendants' answer may contain material statements, besides answers to interrogatories; s. 14.

*Motion for a decree.*—The plaintiff may, on expiry of time for answering, but before replication, move for decree or decretal order; s. 15.

The Court may refuse or grant such motion, or make an order for further prosecution, and as to costs; s. 16.

*Exceptions for impertinence.*—These are abolished, with a proviso for the Court, upon

motion, to direct payment of costs by the party introducing impertinent matter; s. 17.

*Production of documents by defendant* may be ordered without answer; s. 18.

*Interrogatories to examine the plaintiff*, may be filed by defendant without answer, if an answer is not required, and so after answer, where an answer is required, but the defendant may exhibit a cross bill instead of filing interrogatories; s. 19.

*Production of documents by the plaintiff* may be ordered upon application of the defendant without answering, if answer not required; and after answering, if an answer is required; s. 20.

*Taking pleas, &c.*—Commissions to take pleas, answers, disclaimers, and examinations, within the jurisdiction, abolished; s. 21.

*Administration of oaths abroad.*—Pleas, answers, &c., may be sworn and taken in Scotland, Ireland, and the Channel Islands, &c., without verifying the signature of the person administering the oath; s. 22.

*Filing pleas, &c.*—Pleas, answers, &c., to be filed without oath of messenger; s. 25.

*Dismissal of bills.*—A defendant not required to answer, and not answering, may move for the dismissal of a bill for want of prosecution; s. 27.

### IV. OF REPLICATIONS.

Issue to be joined by filing replication as at present, where a decree is not moved for; s. 26.

### V. OF EVIDENCE.

The present mode of examining witnesses, and the practice relating thereto, abolished. The Court may order particular witnesses to be examined as now practised; s. 28.

When a suit by bill is at issue, the plaintiff must give notice to the defendant of his desire that evidence be adduced orally or by affidavit; and the defendant must give a similar notice within the time to be limited; s. 29.

When required, evidence shall be taken orally, unless the Court otherwise order in case a party has not a sufficient interest; s. 30.

Witnesses to be examined and cross-examined by one of the examiners of the Court in the presence of the parties, their counsel, solicitors, or agents; s. 31.

Depositions to be taken down in writing, and read over to the witness, who shall sign the same in the presence of parties, and if he refuses to sign, the examiner may sign; and the examiner may state special matter; s. 32.

If parties refuse to be sworn, or to answer any lawful question, the same course to be

pursued as is now adopted upon written interrogatories before examiners; s. 33.

The original depositions to be transmitted to, and filed in, the Record Office; s. 34.

Commissions for examination of witnesses within the jurisdiction of the Court dispensed with; s. 35.

Affidavits as to particular facts or circumstances may be used by consent or by leave of the Court; s. 36.

*Form of affidavits.*—Affidavits to be divided into numbered paragraphs; s. 37.

*Closing the evidence,* within the time prescribed by General Order; witnesses by affidavit to be subject to oral cross-examination and re-examination; s. 38.

*Examination before the Court.*—The Court may require the production and oral examination of any witness before itself, and determine by whom the costs of such examination shall be paid; s. 39.

Any party in a cause may by subpoena require the attendance of any witness before an examiner, upon claims, motions, petitions, or other proceedings, in like manner as with a view to a hearing; s. 40.

*Evidence after hearing.*—To be taken in the same manner as before the hearing; s. 41.

## VI. SPECIAL JURISDICTION OF THE COURT.

*Declaratory decree.*—No suit to be objected to because only a declaratory decree or order is sought for; s. 50.

*Partial reliefs.*—The Court may decide between some of the parties without making others interested in the property parties to the suit, and without requiring all the trusts to be executed under the direction of the Court; s. 51.

*Sale of real estate.*—The Court may order real estate to be sold at any time after the institution of the suit; s. 55.

Before sale of the estate, an abstract of title to be laid before conveyancing counsel, in order that directions may be given as to conditions of sale; s. 56.

*Income of property the subject of suit.*—The Court may allow to parties part or the whole of the annual income of property the subject of the suit, at any time after the commencement thereof; s. 57.

*Foreclosure.*—The Court may direct the sale of mortgaged property, instead of a foreclosure; s. 48.

*Injunctions.*—The practice as to injunctions to stay proceedings at law to be assimilated to the practice as to special injunctions; s. 58.

The answer of the defendant on motions

respecting injunctions and receivers to be regarded as an affidavit; s. 59.

*Corrections of erroneous proceedings.*—In case the directions as to the practice and course of proceeding, are not followed, the Court may order proceedings to be rectified and payment of costs; s. 60.

*Questions of law.*—The Court of Chancery not to send cases for the opinion of Courts of Common Law, but to decide the questions; s. 61.

And the Court may determine the legal title of party seeking relief, without requiring the parties to proceed at law; s. 62.

*Retiring Lord Chancellor* may deliver a written judgment within six weeks. 15 & 16 Vict. c. 80; s. 60.

## VII. JUDGES AT CHAMBERS AND REMAINING MASTERS.

*Abolition of the office of Master.*—Office of Master in Ordinary in Chancery abolished, except as to the execution of certain duties. 15 & 16 Vict. c. 80; s. 1.

Two Masters in Ordinary released from their duties on first day of Michaelmas Term, 1852, and the other Masters to be released at the discretion of the Lord Chancellor, with a proviso as to matters depending before the Masters now released; s. 3.

*Powers for winding up causes and matters before the Masters.*—Power to the Masters to summon parties, or their solicitors, and to settle and wind up proceedings before them; s. 7.

Power to the Court upon the Master's report or certificate to make order for prosecution or final disposal of any suit or matter, and for payment of costs; s. 8.

The solicitor to suitors' fee fund, on the neglect of parties, directed to bring the Master's report before the Court and his costs provided for; s. 9.

*Duties of remaining Masters.*—No fresh references to Masters, except in cases already before them, and in matters under Winding-up Acts, until all the Masters are released; those remaining shall prosecute all the business depending; s. 10.

*Sittings of the Judges at Chambers.*—Power to the Master of the Rolls and the Vice-Chancellors to sit at Chambers for the despatch of business; s. 11.

*Jurisdiction.*—Judges to have the same power and jurisdiction at Chambers as in open Court.

Orders made in Chambers to be ordinarily drawn up by Judges' chief clerks, but Judges may direct them to be drawn up by the registrars, and may require their attendance at Chambers for the purpose; s. 14.

Orders made at Chambers by Judges to have the same force and effect, and may be signed and enrolled, as Orders of Court; s. 15.

*Business at Chambers.*—Matters to be disposed of in Chambers by Judges, viz., for time to plead, answer, or demur;—leave to amend;—to enlarge publication;—to produce documents;—the conduct of suits;—guardianship and maintenance of infants;—management of property, and such matters as the Judge may see fit, or the Lord Chancellor by general order direct; s. 26.

*Course of proceeding.*—Power to Judges to adjourn from open Court to Chambers, and *vice versa*, the consideration of any matter; s. 27.

Mode of proceeding before Judges at Chambers to be by summons as at common law; s. 28.

Power to Judges to direct what matters and things shall be investigated by themselves, what by their chief clerks.

Right to suitor to bring any point before the Judge; s. 29.

Power to chief clerks to issue advertisements and summonses, to administer oaths, &c., as the Judge shall direct; s. 30.

Parties and witnesses not attending, liable to process of contempt, and to penalties for false swearing, &c.; s. 31.

Result of proceedings before chief clerk to be embodied in form of short certificate or report; s. 32.

No exceptions to lie to certificate or report, but parties at liberty to take opinion of Judge upon any particular point; s. 33.

Certificate, &c., signed and adopted by the Judge, binding on all parties, unless discharged or varied; s. 34.

3 & 4 Will. 4, c. 94, ss. 13, 14 and 15, repealed, empowering Masters to make orders for time, leave to amend bills, and enlarge publication; s. 35.

All powers possessed by Masters to be exercised by Judges; s. 36.

Power to Judges to exercise the powers given by sections 7, 8, and 9 of this Act, and to dispose of any cause, &c., in open Court; s. 37.

Power to the Lord Chancellor, with advice, &c., of Judges, to make rules and orders for regulating the mode of procedure at Chambers, &c.; s. 38.

*Remaining Masters' Offices.*—Business of their offices to be conducted in the same manner as similar business is conducted by the Judges; s. 39.

*Conveyancing Counsel.*—Power to Judges at Chambers to take the opinion of conveyancing counsel in certain matters.

Power to parties to object to opinion, and objection to be disposed of in Chambers or open Court; s. 40.

Power to the Lord Chancellor to nominate not less than six conveyancing counsel of ten years' practice, and to supply vacancies and distribute business; s. 41.

*Assistance of accountants, merchants, &c.*—Power to obtain the assistance and to act upon the certificate of accountants, merchants, engineers, actuaries, or other scientific persons; s. 42.

Taxing Masters of the Court of Chancery to regulate fees to be allowed to conveyancing counsel, accountants, &c., subject to appeal; s. 43.

#### VIII. FEES.

No officer hereafter to receive fees for his own use, but all officers to be paid by salary, 15 & 16 Vict. c. 87; s. 1.

*Office copies.*—Allowances for copying to cease, and power to the Lord Chancellor to make regulations as to making and delivery of copies; s. 5.

*Alteration and collection of fees by stamps.*—Power of the Lord Chancellor to vary, reduce, or abolish fees, and to provide for their collection by stamps; s. 6.

After such orders, fees to be received by means of stamps only; s. 7.

*Allowance of spoiled stamps.*—Regulations to be made as to allowance for spoiled stamps; s. 10.

#### IX. LUNACY.

Power to abolish fees and to substitute a per centage in lieu thereof; s. 14.

The Secretary of Lunatics to be called Registrar, who is to enter orders and furnish office copies; s. 30.

The Accountant-General to act on such orders as if drawn up by a Registrar in Chancery; s. 31.

Certificate of lunacy to be filed in the Office of the Registrar in Lunacy; s. 32.

#### X. ABOLISHED OFFICES.

*Subpoena Office.*—The duties transferred to Clerks of Records and Writs; s. 28.

*Affidavit Office.*—The duties to be performed by Clerks of Records and Writs; s. 29.

*Clerk of Reports.*—The duties to be performed by such persons as the Lord Chancellor may appoint; s. 29.

*Clerks of Accounts in the Report Office* abolished; s. 36.

Such is an outline of the alterations in Jurisdiction, Pleading and Practice effected by the New Acts; and we shall take an

early opportunity of adverting to the several New Orders, and the effect thereof. In this summary we have availed ourselves of the very accurate Analysis given by Mr Kennedy in his edition of the Acts. See his valuable notes on the several sections.

We have omitted all the clauses relating to salaries, compensations, and pensions, to which we adverted in a former Article, and which may form the subject of further observation. Our object has been to present the practitioner with a "bird's-eye view," taken from the three Acts collectively, of the several important changes effected in the jurisdiction and in the system of pleading and practice in Chancery. We have already laid before our readers both the Acts and Orders *in extenso*, and shall notice hereafter such important points of practice arising thereon as occasion may require.

## NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

### COMMON LAW PROCEDURE.

15 & 16 VICT. c. 76.

[Continued from p. 418, ante.]

#### EJECTMENT.

172. Any other person not named in such writ shall, by leave of the Court or a Judge, be allowed to appear and defend, on filing an affidavit showing that he is in possession of the land either by himself or his tenant.

173. Any person appearing to defend as landlord in respect of property, whereof he is in possession only by his tenant, shall state in his appearance that he appears as landlord; and such person shall be at liberty to set up any defence which a landlord appearing in an action of ejectment has heretofore been allowed to set up, and no other.

174. Any person appearing to such writ shall be at liberty to limit his defence to a part only of the property mentioned in the writ, describing that part with reasonable certainty in a notice intitled in the Court and cause, and signed by the party appearing or his attorney; such notice to be served within four days after appearance upon the attorney whose name is indorsed on the writ, if any, and if none, then to be filed in the Master's Office; and an appearance without such notice confining the defence to part, shall be deemed an appearance to defend for the whole.

175. Want of "reasonable certainty" in the description of the property, or part of it, in the writ or notice, shall not nullify them, but shall only be ground for an application to a Judge for better particulars of the land claimed or defended, which a Judge shall have power to give in all cases.

176. The Court or a Judge shall have power to strike out or confine appearances and de-

fences set up by persons not in possession by themselves or their tenants.

177. In case no appearance shall be entered into within the time appointed, or if an appearance be entered, but the defence be limited to part only, the plaintiffs shall be at liberty to sign a judgment that the person whose title is asserted in the writ shall recover possession of the land, or of the part thereof to which the defence does not apply; which judgment, if for all, may be in the form contained in the Schedule (A.) to this Act annexed, marked No. 14, or to the like effect, and if for part, may be in the form contained in the Schedule (A.) to this Act annexed, marked No. 15, or to the like effect.

178. In case an appearance shall be entered, an issue may [at] once be made up, without any pleadings, by the claimants or their attorney, setting forth the writ, and stating the fact of the appearance, with its date, and the notice limiting the defence, if any, of each of the persons appearing, so that it may appear for what defence is made, and directing the sheriff to summon a jury; and such issue, in case defence is made for the whole, may be in the form contained in Schedule (A.) to this Act annexed, marked No. 16, or to the like effect, and in case defence is made for part, may be in the form contained in the Schedule (A.) to this Act annexed, marked No. 15, or to the like effect.

179. By consent of the parties, and by leave of a Judge, a special case may be stated according to the practice heretofore used.

180. The claimants may, if no special case be agreed to, proceed to trial upon the issue, in the same manner as in other actions; and the particulars of the claim and defence, if any, or copies thereof, shall be annexed to the record by the claimants; and the question at the trial shall, except in the cases hereafter mentioned, be, whether the statement in the writ of the title of the claimants is true or false, and, if true, then which of the claimants is entitled, and whether to the whole or part, and if to part, then to which part of the property in question; and the entry of the verdict may be made in the form contained in the Schedule (A.) to this Act annexed, marked No. 17, or to the like effect, with such modifications as may be necessary to meet the facts.

181. In case the title of the claimant shall appear to have existed as alleged in the writ, and at the time of service thereof, but it shall also appear to have expired before the time of trial, the claimant shall, notwithstanding, be entitled to a verdict according to the fact that he was so entitled at the time of bringing the action and serving the writ, and to a judgment for his cost of suit.

182. The Court or a Judge may, on the application of either party, order that the trial shall take place in any county or place other than that in which the venue is laid; and such order being suggested on the record, the trial may be had accordingly.

183. If the defendant appears, and the



claimant does not appear at the trial, the claimant shall be nonsuited; and if the claimant appears, and the defendant does not appear, the claimant shall be entitled to recover as heretofore, without any proof of his title.

184. The jury may find a special verdict, or either party may tender a bill of exceptions.

185. Upon a finding for the claimant, judgment may be signed, and execution issue for the recovery of possession of the property, or such part thereof as the jury shall find the claimant entitled to, and for costs, within such time, not exceeding the fifth day in Term after the verdict, as the Court or Judge before whom the cause is tried shall order; and if no such order be made, then on the fifth day in Term after the verdict, or within 14 days after such verdict, whichever shall first happen.

186. Upon a finding for the defendants, or any of them, judgment may be signed, and execution issue for costs against the claimants named in the writ, within such time, not exceeding the fifth day in Term after the verdict, as the Court or Judge before whom the cause is tried shall order; and if no such order be made, then on the fifth day in Term after the verdict, or within 14 days after such verdict, whichever shall first happen.

187. Upon any judgment in ejectment for recovery of possession and costs, there may be either one writ or separate writs of execution for the recovery of possession and for the costs, at the election of the claimant.

188. In case of such an action being brought by some or one of several persons entitled as joint tenants, tenants in common, or coparceners, any joint tenant, tenant in common, or coparcener in possession, may, at the time of appearance, or within four days after, give notice in the same form as in the notice of a limited defence, that he or she defends as such, and admits the right of the claimant to an undivided share of the property (stating what share), but denies any actual ouster of him from the property, and may, within the same time, file an affidavit stating with reasonable certainty that he or she is such joint tenant, tenant in common, or coparcener, and the share of such property to which he or she is entitled, and that he or she has not ousted the claimant; and such notice shall be entered in the issue in the same manner as the notice limiting the defence, and upon the trial of such an issue the additional question of whether an actual ouster has taken place shall be tried.

189. Upon the trial of such issue as last aforesaid, if it shall be found that the defendant is joint tenant, tenant in common, or coparcener with the claimant, then the question whether an actual ouster has taken place shall be tried, and unless such actual ouster shall be proved the defendant shall be entitled to judgment and costs; but if it shall be found either that the defendant is not such joint tenant, tenant in common, or coparcener, or that an actual ouster has taken place, then the claimant shall be entitled to such judgment for the recovery of possession and costs.

190. The death of a claimant or defendant shall not cause the action to abate, but it may be continued as hereinafter mentioned.

191. In case the right of the deceased claimant shall survive to another claimant, a suggestion may be made of the death, which suggestion shall not be traversable, but shall only be subject to be set aside if untrue, and the action may proceed at the suit of the surviving claimant; and if such a suggestion shall be made before the trial, then the claimant shall have a verdict and recover such judgment as aforesaid, upon its appearing that he was entitled to bring the action either separately or jointly with the deceased claimant.

192. In case of the death before trial of one of several claimants, whose right does not survive to another or others of the claimants, where the legal representative of the deceased claimant shall not become a party to the suit in the manner hereinafter mentioned, a suggestion may be made of the death, which suggestion shall not be traversable, but shall only be subject to be set aside if untrue, and the action may proceed at the suit of the surviving claimant for such share of the property as he is entitled to, and costs.

193. In case of a verdict for two or more claimants, if one of such claimants die before execution executed, the other claimant may, whether the legal right to the property shall survive or not, suggest the death in manner aforesaid, and proceed to judgment and execution for recovery of possession of the entirety of the property and the costs; but nothing herein contained shall affect the right of the legal representative of the deceased claimant, or the liability of the surviving claimant to such legal representative; and the entry and possession of such surviving claimant under such execution shall be considered as an entry and possession on behalf of such legal representative in respect of the share of the property to which he shall be entitled as such representative, and the Court may direct possession to be delivered accordingly.

194. In case of the death of a sole claimant, or, before trial, of one of several claimants, whose right does not survive to another or others of the claimants, the legal representative of such claimant may, by leave of the Court or a Judge, enter a suggestion of the death, and that he is such legal representative, and the action shall thereupon proceed; and if such suggestion be made before the trial, the truth of the suggestion shall be tried thereat, together with the title of the deceased claimant, and such judgment shall follow upon the verdict in favour of or against the person making such suggestion, as hereinbefore provided with reference to a judgment for or against such claimant; and in case such suggestion in the case of a sole claimant be made after trial and before execution executed by delivery of possession thereupon, and such suggestion be denied by the defendant within eight days after notice thereof, or such further time as the Court or a Judge may allow, then such sugges-

tion shall be tried; and if, upon the trial thereof, a verdict shall pass for the person making such suggestion, he shall be entitled to such judgment as aforesaid for the recovery of possession, and for the costs of and occasioned by such suggestion; and in case of a verdict for the defendant such defendant shall be entitled to such judgment as aforesaid for costs.

195. In case of the death, before or after judgment, of one of several defendants in ejectment, who defend jointly, a suggestion may be made of the death, which suggestion shall not be traversable, but only be subject to be set aside if untrue, and the action may proceed against the surviving defendant to judgment and execution.

196. In case of the death of a sole defendant, or of all the defendants in ejectment, before trial, a suggestion may be made of the death, which suggestion shall not be traversable, but only be subject to be set aside if untrue, and the claimants shall be entitled to judgment for recovery of possession of the property, unless some other person shall appear and defend within the time to be appointed for that purpose by the order of the Court or a Judge, to be made upon the application of the claimants; and it shall be lawful for the Court or a Judge, upon such suggestion being made and upon such application as aforesaid, to order that the claimants shall be at liberty to sign judgment within such time as the Court or Judge may think fit, unless the person then in possession, by himself or his tenant, or the legal representative of the deceased defendant, shall within such time appear and defend the action; and such order may be served in the same manner as the writ; and in case such person shall appear and defend the same, proceedings may be taken against such new defendant as if he had originally appeared and defended the action; and if no appearance be entered and defence made, then the claimant shall be at liberty to sign judgment pursuant to the order.

197. In case of the death of a sole defendant or of all the defendants in ejectment after verdict, the claimants shall nevertheless be entitled to judgment as if no such death had taken place, and to proceed by execution for recovery of possession without suggestion or revivor, and to proceed for the recovery of the costs, in like manner as upon any other judgment for money, against the legal representatives of the deceased defendant or defendants.

198. In case of the death before trial of one of several defendants in ejectment, who defends separately for a portion of the property for which the other defendant or defendants do not defend, the same proceedings may be taken as to such portion as in the case of the death of a sole defendant, or the claimants may proceed against the surviving defendants in respect of the portion of the property for which they defend.

199. In case of the death before trial of one

of several defendants in ejectment, who defends separately in respect of property for which surviving defendants also defend, it shall be lawful for the Court or a Judge at any time before the trial to allow the person at the time of the death in possession of the property, or the legal representative of the deceased defendant, to appear and defend on such terms as may appear reasonable and just, upon the application of such person or representative; and if no such application be made or leave granted, the claimant, suggesting the death in manner aforesaid, may proceed against the surviving defendant or defendants to judgment and execution.

200. The claimant in ejectment shall be at liberty at any time to discontinue the action as to one or more of the defendants, by giving to the defendant or his attorney a notice headed in the Court and cause, and signed by the claimant or his attorney, stating that he discontinues such action; and thereupon the defendant, to whom such notice is given, shall be entitled to and may forthwith sign judgment for costs in the form contained in the schedule (A.) to this Act annexed, marked No. 18, or to the like effect.

201. In case one of several claimants shall be desirous to discontinue, he may apply to the Court or a Judge to have his name struck out of the proceedings, and an order may be made thereupon upon such terms as to the Court or Judge may seem fit, and the action shall thereupon proceed at the suit of the other claimants.

202. If after appearance entered, the claimant, without going to trial, allow the time, allowed for going to trial by the practice of the Court in ordinary cases after issue joined, to elapse, the defendant in ejectment may give twenty days notice to the claimant to proceed to trial at the sittings or assizes next after the expiration of the notice; and if the claimant afterwards neglects to give notice of trial for such sittings or assizes, or to proceed to trial in pursuance of the said notice given by the defendant, and the time for going to trial shall not be extended by the Court or a Judge, the defendant may sign judgment in the form contained in the schedule (A.) to this Act annexed, marked No. 19, and recover the costs of defence.

203. A sole defendant or all the defendants in ejectment shall be at liberty to confess the action as to the whole or part of the property, by giving to such claimant a notice headed in the Court or cause, and signed by the defendant or defendants, such signature to be attested by his or their attorney; and thereupon the claimant shall be entitled to and may forthwith sign judgment and issue execution for the recovery of possession and costs in the form contained in the schedule (A.) to this Act annexed, marked No. 20, or to the like effect.

204. In case one of several defendants in ejectment, who defends separately for a portion of the property for which the other defendant or defendants do not defend, shall be desirous

of confessing the claimant's title to such portion, he may give a like notice to the claimant; and thereupon the claimant shall be entitled to and may forthwith sign judgment and issue execution for the recovery of possession of such portion of the property, and for the costs occasioned by the defence relating to the same, and the action may proceed as to the residue.

205. In case one of several defendants in ejectment, who defends separately in respect of property for which other defendants also defend, shall be desirous of confessing the claimant's title, he may give a like notice thereof; and thereupon the claimant shall be entitled to and may sign judgment against such defendant for the costs occasioned by his defence, and may proceed in the action against the other defendants to judgment and execution.

206. It shall not be necessary before issuing execution upon any judgment under the authority of this Act to enter the proceedings upon any roll, but an incipitur thereof may be made upon paper, shortly describing the nature of the judgment according to the practice heretofore used, and judgment may thereupon be signed, and costs taxed, and execution issued, according to the practice heretofore used: provided nevertheless, that the proceedings may be entered upon the roll whenever the same may become necessary for the purpose of evidence, or of bringing error, or the like.

207. The effect of a judgment in an action of ejectment under this Act shall be the same as that of a judgment in the action of ejectment heretofore used.

208. Error may be brought in like manner as in other actions upon any judgment in ejectment, after a special verdict found by the jury, or a bill of exceptions, or by consent after a special case stated, but, except in the case of such consent as aforesaid, execution shall not be thereby stayed, unless the plaintiff in error shall, within four clear days after lodging the memorandum alleging error, or after the signing of the judgment, whichever shall last happen, or before execution executed, be bound unto the claimant, who shall have recovered judgment in such action of ejectment, in double the yearly value of the property, and double the costs recovered by the judgment, with condition, that if the judgment shall be affirmed by the Court of Error, or the proceedings in error be discontinued by the plaintiff therein, then the plaintiff in error shall pay such costs, damages, and sum or sums of money as shall be awarded upon or after such judgment affirmed or discontinuance; and it shall be lawful for the Court wherein execution ought to be granted upon such affirmation or discontinuance, upon the application of the claimant, to issue a writ to inquire as well of the mesne profits as of the damage by any waste committed after the first judgment in ejectment, which writ may be tested on the day on which it shall issue, and be returnable immediately after the execution thereof; and upon the return thereof judgment shall be given, and execution awarded for such

mesne profits and damages, and also for costs of suit.

209. Every tenant to whom any writ in ejectment shall be delivered, or to whose knowledge it shall come, shall forthwith give notice thereof to his landlord, or his bailiff or receiver, under penalty of forfeiting the value of three years' improved or rack rent of the premises, demised or holden in the possession of such tenant, to the person to whom he holds, to be recovered by action in any Court of Common Law having jurisdiction for the amount.

210. In all cases between landlord and tenant, as often as it shall happen that one half year's rent shall be in arrear, and the landlord or lessor, to whom the same is due, hath right by law to re-enter for the non-payment thereof, such landlord or lessor shall and may, without any formal demand or re-entry, serve a writ in ejectment for the recovery of the demised premises, or in case the same cannot be legally served, or no tenant be in actual possession of the premises, then such landlord or lessor may affix a copy thereof upon the door of any demised messuage, or in case such action in ejectment shall not be for the recovery of any messuage, then upon some notorious place of the lands, tenements, or hereditaments comprised in such writ in ejectment, and such affixing shall be deemed legal service thereof, which service or affixing such writ in ejectment shall stand in the place and stead of a demand and re-entry; and in case of judgment against the defendant for non-appearance, if it shall be made appear to the Court where the said action is depending, by affidavit, or be proved upon the trial in case the defendant appears, that half a year's rent was due before the said writ was served, and that no sufficient distress was to be found on the demised premises, countervailing the arrears then due, and that the lessor had power to re-enter, then and in every such case the lessor shall recover judgment and execution, in the same manner as if the rent in arrear had been legally demanded, and a re-entry made; and in case the lessee or his assignee, or other person claiming or deriving under the said lease, shall permit and suffer judgment to be had and recovered on such trial in ejectment, and execution to be executed thereon, without paying the rent and arrears, together with full costs, and without proceeding for relief in equity within six months after such execution executed, then and in such case the said lessee, his assignee, and all other persons claiming and deriving under the said lease, shall be barred and foreclosed from all relief or remedy in law or equity, other than by bringing error for reversal of such judgment, in case the same shall be erroneous, and the said landlord or lessor shall from thenceforth hold the said demised premises discharged from such lease; and if on such ejectment a verdict shall pass for the defendant, or the claimant shall be nonsuited therein, then in every such case such defendant shall have and recover his costs; provided that nothing herein contained shall

extend to bar the right of any mortgagee of such lease, or any part thereof, who shall not be in possession, so as such mortgagee shall and do, within six months after such judgment obtained and execution executed, pay all rent in arrear, and all costs and damages sustained by such lessor or person entitled to the remainder or reversion as aforesaid, and perform all the covenants and agreements which, on the part and behalf of the first lessee, are and ought to be performed.

211. In case the said lessee, his assignee, or other person claiming any right, title, or interest, in law or equity, of, in, or to the said lease, shall, within the time aforesaid, proceed for relief in any Court of Equity, such person shall not have or continue any injunction against the proceedings at law on such ejectment, unless he does or shall, within forty days next after a full and perfect answer shall be made by the claimant in such ejectment, bring into Court, and lodge with the proper officer such sum and sums of money as the lessor or landlord shall in his answer swear to be due and in arrear over and above all just allowances, and also the costs taxed in the said suit, there to remain till the hearing of the cause, or to be paid out to the lessor or landlord on good security, subject to the decree of the Court; and in case such proceedings for relief in equity shall be taken within the time aforesaid, and after execution is executed, the lessor or landlord shall be accountable only for so much and no more as he shall really and *bona fide*, without fraud, deceit, or wilful neglect, make of the demised premises from the time of his entering into the actual possession thereof; and if what shall be so made by the lessor or landlord happen to be less than the rent reserved on the said lease, then the said lessee or his assignee, before he shall be restored to his possession, shall pay such lessor or landlord, what the money so by him made fell short of the reserved rent for the time such lessor or landlord held the said lands.

212. If the tenant or his assignee do or shall, at any time before the trial in such ejectment, pay or tender to the lessor or landlord, his executors or administrators, or his or their attorney in that cause, or pay into the Court where the same cause is depending, all the rent and arrears, together with the costs, then and in such case, all further proceedings on the said ejectment shall cease and be discontinued; and if such lessee, his executors, administrators, or assigns, shall, upon such proceedings as aforesaid, be relieved in equity, he and they shall have, hold, and enjoy the demised lands, according to the lease thereof made, without any new lease.

213. Where the term or interest of any tenant now or hereafter holding under a lease or agreement in writing any lands, tenements, or hereditaments for any term or number of years certain, or from year to year, shall have expired or been determined either by the landlord or tenant by regular notice to quit, and such tenant, or any one holding or claim-

ing by or under him, shall refuse to deliver up possession accordingly, after lawful demand in writing made and signed by the landlord or his agent, and served personally upon or left at the dwelling-house or usual place of abode of such tenant or person, and the landlord shall thereupon proceed by action of ejectment for the recovery of possession, it shall be lawful for him, at the foot of the writ in ejectment, to address a notice to such tenant or person requiring him to find such bail, if ordered by the Court or a Judge, and for such purposes as are hereinafter next specified; and upon the appearance of the party on an affidavit of service of the writ and notice, it shall be lawful for the landlord producing the lease or agreement, or some counterpart or duplicate thereof, and proving the execution of the same by affidavit, and upon affidavit that the premises have been actually enjoyed under such lease or agreement, and that the interest of the tenant has expired, or been determined by regular notice to quit, as the case may be, and that possession has been lawfully demanded in manner aforesaid, to move the Court or apply by summons to a Judge at chambers for a rule or summons for such tenant or person to show cause, within a time to be fixed by the Court or Judge on a consideration of the situation of the premises, why such tenant or person should not enter into a recognizance by himself and two sufficient sureties in a reasonable sum conditioned to pay the costs and damages which shall be recovered by the claimants in the action; and it shall be lawful for the Court or Judge upon cause shown, or upon affidavit of the service of the rule or summons in case no cause shall be shown, to make the same absolute in the whole or in part, and to order such tenant or person, within a time to be fixed, upon a consideration of all the circumstances, to find such bail, with such conditions and in such manner as shall be specified in the said rule or summons, or such part of the same so made absolute; and in case the party shall neglect or refuse so to do, and shall lay no ground to induce the Court or Judge to enlarge the time for obeying the same, then the lessor or landlord filing an affidavit that such rule or order has been made and served and not complied with shall be at liberty to sign judgment for recovery of possession and costs of suit in the form contained in the schedule (A.) to this Act annexed, marked No. 21, or to the like effect.

214. Wherever it shall appear on the trial of any ejectment at the suit of a landlord against a tenant, that such tenant or his attorney hath been served with due notice of trial, the Judge before whom such cause shall come on to be tried shall, whether the defendant shall appear upon such trial or not, permit the claimant on the trial, after proof of his right to recover possession of the whole or of any part of the premises mentioned in the writ in ejectment, to go into evidence of the mesne profits thereof which shall or might have accrued from the day of the expiration or determination of the

225. It shall and may be lawful to and for the Judges of each of the said Courts from time to time to make such rules and orders for the government and conduct of the ministers and officers of their respective Courts, in and relating to the distribution and performance of the duties and business to be done and performed in the execution of this Act, as such Judges may think fit and reasonable: Provided always, that no additional charge be thereby imposed on the suitors.

#### EFFECT OF INJUNCTION.

And whereas it is expedient that injunctions and orders to stay proceedings should be rendered more effectual, be it enacted as follows:

226. In case any action, suit, or proceeding in any Court of Law or Equity shall be commenced, sued, or prosecuted, in disobedience of and contrary to any writ of injunction, rule, or order of either of the Superior Courts of Law or Equity at Westminster, or of any Judge thereof, in any other Court than that by or in which such injunction may have been issued, or rule or order made, upon the production to any such other Court or Judge thereof of such writ of injunction, rule, or order, the said other Court (in which such action, suit, or proceeding may be commenced, prosecuted, or taken), or any Judge thereof, shall stay all further proceedings contrary to any such injunction, rule, or order; and thenceforth all further and subsequent proceedings shall be utterly null and void to all intents and purposes: Provided always, that nothing herein contained shall be held to diminish, alter, abridge, or vary the liability of any person or persons commencing, suing, or prosecuting any such action, suit, or proceeding contrary to any injunction, rule, or order of either of the Courts aforesaid, to any attachment, punishment, or other proceeding to which any such person or persons are, may, or shall be liable in cases of contempt of either of the Courts aforesaid, in regard to the commencing, suing, or prosecuting such action, suit, or proceeding.

And be it enacted as follows:

227. In the construction of this Act the word "Court" shall be understood to mean any one of the Superior Courts of Common Law at Westminster in which any action is brought; and the word "Judge" shall be understood to mean a Judge or Baron of any of the said Courts; and the word "Master" shall be understood to mean a Master of any of the said Courts; and the word "action" shall be understood to mean any personal action brought by writ of summons in any of the said Courts; and no part of the United Kingdom of Great Britain and Ireland, nor the Islands of Man, Guernsey, Jersey, Alderney, or Sark, nor any islands adjacent to any of them, being part of the dominions of her Majesty, shall be deemed to be "beyond the seas" within the meaning of this Act: And wherever in this Act, in describing or referring to any person or party, matter or thing, any word importing the singular number or masculine gender is used, the

same shall be understood to include and shall be applicable to several persons and parties as well as one person or party, and females as well as males, and bodies corporate as well as individuals, and several matters and things as well as one matter or thing, unless it otherwise be provided, or there be something in the subject or context repugnant to such construction.

228. It shall be lawful for her Majesty from time to time, by an Order in Council, to direct that all or any part of the provisions of this Act or of the rules to be made in pursuance thereof shall apply to all or any Court or Courts of Record in England or Wales, and within one month after such order shall have been made and published in the *London Gazette*, such provisions and rules respectively shall extend and apply in manner directed by such order; and any such order may be in like manner from time to time altered or annulled.

229. And whereas it is expedient to apply the provisions of this Act, with the requisite modifications, to the Superior Courts of the Counties Palatine of Lancaster and Durham respectively: All the enactments and provisions of this Act with respect to writs for the commencement of personal actions, except such as relate to the teste thereof in the name of a Judge, to concurrent writs, and to the service of writs elsewhere than in the Counties Palatine of Lancaster and Durham respectively, and proceedings against parties residing out of the jurisdiction of the said Courts; and all the provisions of this Act with respect to the appearance of the defendant and proceedings of the plaintiff in default of appearance; and with respect to the joinder of parties to actions and joinder of causes of action; and with respect to the determination of questions raised by consent of the parties without pleading; and with respect to the language and form of pleadings, and provisions as to pleadings, profert,oyer, setting out of documents; and with regard to the time and manner of declaring; and as to pleas and subsequent pleadings, and incident thereto; and examples and forms of pleading and causes of action; and with respect to judgment by default, and the mode of ascertaining the amount to be recovered thereupon and incident thereto; and all the provisions of this Act with respect to juries and jury process; and with respect to the admission of documents; and with respect to the expenses of execution and the remaining in force and renewal of execution, the discharging of parties from execution, and charging in execution persons in prison; and with respect to proceedings for the revival of judgments and other proceedings by and against persons not parties to the record; and with respect to the effect of death, marriage, and bankruptcy upon the proceedings in an action; and with respect to the proceedings upon motions to arrest the judgment and for judgment *non obstante veredicto*; and with respect to proceedings in error subject to the proviso hereinafter contained; and all the provisions of this Act with respect to the action of ejectment, and incident

thereto; and with respect to the power of amendment by Courts and the Judges thereof, shall extend and apply to the Court of Common Pleas at Lancaster and the Court of Pleas at Durham, and actions and proceedings therein respectively.

[To be continued.]

## PRINTING BILLS IN CHANCERY.

THE Chancery Commissioners, in their Report, say, that "it has been suggested that the proceedings in Chancery suits might advantageously be printed. We find, upon inquiry, that there are some practical difficulties in adopting this suggestion as to answers, affidavits, and other portions of the proceedings. We recommend, however, that the bill or claim should in future be printed, and that a print should be filed with the proper officer instead of the engrossment. We further recommend that a print of the bill or claim should be served on every defendant in lieu of serving a writ of subpoena or writ of summons, which writs should be abolished. The print served on each defendant should have an indorsement addressed to the defendant to the same effect as the present writ of subpoena or writ of summons, and should be stamped by the officer with a proper stamp, indicating that the bill or claim has been filed.

"In order to provide for cases of urgency, the officer of the Court should be empowered to receive a written copy of the bill or claim upon the undertaking of the plaintiff's solicitor to file a printed copy within a time to be limited.

"When it is necessary to amend the bill or claim, a reprint of the whole or part would be necessary, except in those cases where, from the limited extent of the amendments, they could conveniently be made on the printed copy."

The evidence given before the Commissioners by Mr. Bloxam, Mr. Lake, and Mr. Weatherall will be found, for the most part in opposition to the proposed scheme of printing bills in Chancery. Indeed the practitioners in general are, we believe, of opinion that both delay and expense will be increased by printing Chancery proceedings. As this is a matter of considerable importance to the Profession, we shall make some extracts from the evidence.

We commence with that of Mr. Bloxam. He says—

"The subject may be divided into three heads:—

"*First.* Whether the expense will be decreased or increased.

"*Secondly.* The practicability of adopting printing.

"*Thirdly.* The advantage to be obtained by doing so.

"*First.* With regard to the expense, there are many matters requiring careful consideration, and which I could consider with greater advantage if I had seen the printer's evidence.

"In considering the expense, it seems to be understood that the comparison is to be made between the cost price of writing and of printing, leaving out of consideration the solicitor's profit. I have above stated that I pay 1d. per folio to a stationer for copying and 1½d. for engrossing, but this is exclusive of paper. I think, taking all matters into consideration, it is not wrong to calculate the whole cost at 2d. per folio, for the purpose of the following estimates.

"In the public offices I understand that the copies are made at 1½d. per folio, exclusive of paper.

"On the other hand, in considering the expense of printing, I shall state the solicitor's expenses without profit. Thus, the copy for the printer I shall take at 2d. per folio, the examining the proof-sheet at 1d., and the attendances on the printer at 2s. The examination of the proof-sheet will occupy two persons, one of whom must be a principal or head clerk. It will be a very important duty, and require much care: and the alteration of the print occupies a good deal of time, and 1d. per folio would scarcely pay the salary of the two clerks. The attendances on the printer I put at a porter's charge, but it would generally be necessary to send a clerk once or twice, and this in most cases some distance."

The comparative expense in different stages of proceeding in a suit is thus stated:—

"If the suit does not proceed further than filing the bill—

|                            | £ | s. | d. |
|----------------------------|---|----|----|
| The printing will be . . . | 2 | 6  | 3  |
| Writing . . .              | 0 | 5  | 6  |

Printing more than writing . . . 2 0 9

"If there is one solicitor appearing for defendants, and the suit does not proceed to a hearing—

|                                | £ | s. | d. |
|--------------------------------|---|----|----|
| The printing, as before . . .  | 2 | 6  | 3  |
| The writing three copies . . . | 0 | 16 | 6  |

Printing more than writing . . . 1 9 9

If there are two solicitors appearing, the writing is increased . . . 0 11 0

0 18 9

If three, it will be further increased 0 11 0

0 7 9

If four, it will be further increased 0 11 0

Then making the writing exceed the printing . . . 0 4 3

Then, 2nd, as to the practicability of printing, Mr. Bloxam states that—

"The delay appears to me to be the most formidable obstacle. The time which would still be occupied in making a copy for the printer would suffice to make any number of copies required for use, where expedition is required. All the time required for printing, including the examination of the proof, would be extra delay. The printers say they would do the printing in 24 hours; but including the examination of the proof, and alteration of the type, this would rarely be the case. Any quantity of writing can be done between the rising of the Court on one day, and the sitting on the next; and so the printer says any quantity of printing could be, but at an extra expense of 25 per cent., and the solicitor and a clerk must be at hand in the night to examine the proof.

"I cannot see how, in injunction cases, bills or affidavits could be printed with sufficient expedition.

"I may also mention cases where it is important to make a person a ward of the Court with expedition. Thus I was once consulted at 10 o'clock at night by the mother of a young lady of 17, who had eloped; and before 12 o'clock that night a bill was engrossed and filed, I and my counsel having dictated to the stationer, who at once engrossed it. The lady was married at seven o'clock the next morning in Scotland, but the object was gained. The gentleman was compelled to make a settlement, and her property is secured to her and her children, although her husband is utterly ruined, and the lady's property would be all gone if I had been compelled to print this bill.

"In urgent injunction cases I have frequently drawn the affidavit in red ink on the draft bill, and then the engrossments of the bill and affidavit and office copy can all be made at the same time.

"I have, also, frequently drawn, engrossed, and office-copied affidavits at the same time by dictating to several clerks.

"Again, I have in the course of one day, settled and transcribed a report; drawn, engrossed, and presented a petition to confirm it; obtained, drawn-up, passed, and entered the order; and left it with the Accountant-General.

"If, therefore, printing is generally adopted, I conceive it must not be compulsory in all cases."

3rd. In considering the *advantages* of printing, apart from the inconvenience, delay, and expense, Mr. Bloxam says:—

"I think the advantages are considerable. More copies than are now made or allowed, of proceedings, would be a great convenience; and the facility of using and referring to a printed copy would be great. I conceive the hearing would be materially expedited by the Court having a printed copy of the pleadings, in all respects corresponding with those in the

hands of all the counsel. The Court would, with great facility, arrive at the facts. The counsel would more easily and effectually become fully acquainted with the facts. The security that all the copies were accurate would be of great value. The serving a defendant with a print of the bill, instead of merely a writ requiring him to take a copy, before he knows what the case is, would be an advantage. An answer might be filed without a messenger's oath.

"In important and really litigated suits, these advantages are greater than in short simple proceedings, which form a great portion of the business of the Court. In such cases, the expense of printing would exceed that of the writing, and the advantages are very trifling, and would not, I think, compensate for the delays and disadvantages. There appears to be no benefit in a short document being printed. The specimen before referred to would be copied on one brief sheet, without being closely written, and could be read with nearly as much facility as the print. This specimen appears to me to represent the benefits of printing in an unfavourable light, both as regards economy and convenience, except that it looks well to the eye. It could not be worth the additional expense to print so short a document.

"In conclusion, although great accommodation and convenience would result from printing, when the prints are completed, yet I cannot think this would compensate for the increased expense, and the serious inconveniences to which it would give rise.

"I may, perhaps, be allowed to draw attention to the great distress that the change would create by throwing out of employment an enormous number of writers, who would have the greatest difficulty in finding any other employment for which they are suited."

It will be found, we think, that the estimate of the expense of printing has been erroneously formed, as compared with copying. Sufficient allowance is not made to the solicitor for supplying the "copy" to the printer and correcting the proofs. And it is erroneous to compare the printer's charge with the law stationer's charge, for although the latter is paid only 1½d. per folio, the solicitor is allowed 4d., which includes the examination and the responsibility for the legal accuracy of the document. The solicitor, or a skilful clerk acquainted with legal proceedings, must be engaged in the work of examination, or the most serious consequences may result to the suitor. The charge of 4d. per folio, therefore, is a moderate sum. A fee of 2d. per folio is expressly allowed to the Clerks of Records by the Orders of 26th October, 1842, for "examining all copies with the records." The solicitor's fee for copying and examining cannot therefore be reduced.

## LAW OF ATTORNEYS.

## TAXATION OF COSTS.—PAYMENT OF BALANCE.

UPON the taxation of a solicitor's bill, the sum of 2,623*l.* was found due to his client, and upon motion the solicitor was ordered to pay the amount, together with the costs of the motion (reported 13 Beav. 108). The client then issued an *elegit*, which proved fruitless.

A second order was made for the payment of the 2,623*l.*, and the costs of the prior motion within 21 days, together with the costs of the present application, and for substituted service. *In re Bainbridge*, 14 Beav. 645.

## LEGAL ETHICS.

## PERSEVERANCE AND ECONOMY.

It was justly observed by an eminent Equity Judge, that the secret of that alchymy by which lawyers attained fortune and success consisted in persevering industry and strict economy. No one will deny to lawyers the merit of industry. Early and late, they labour unremittingly in their clients' affairs, and bestow upon them a carefulness of consideration and anxiety of thought that are rarely given to their own concerns. Whilst thus incessantly engaged in advising on or superintending the affairs of others,—in providing against imprudence or remedying the evils it has occasioned,—they too often neglect their own personal interests. And it must be admitted that they are exposed to many temptations. Their position and status as members of an honourable and learned Profession, render it almost unavoidable that they should incur considerable expense in the management of their business. If the trader is justifiable in making an imposing display of his commodities to promote their sale, the lawyer may be somewhat excused for presenting a respectable appearance and conducting his establishment in a liberal style.

Our attention to the important duty of frugality has been recently called by the publication of a useful tract under the name of "The Penny," written by an able and learned lawyer. We therefore, as well from respect to him, as the importance of the subject, venture to direct attention to it,—gratified as our readers must be to find the sages of the Law, who have retired from its toils and duties,

thus devoting some of their leisure to the moral benefit of the community. We are correct, we believe, in ascribing this interesting collection of the "Wise Saws" of past ages to Mr. J. J. Wilkinson, the author of many valuable Treatises on the Law.

In submitting to our readers a specimen of the work, we shall limit our selections chiefly to the Aphorisms of Lord Bacon:—

"Men seem neither well to understand their riches nor their strength; of the former they believe greater things than they should; of the latter much less.

"Ordinary expenses ought to be limited by a man's estate and property, and governed with such regard as it be within his compass.

"Recollect, 'use brings custom;' 'custom is second nature.' Hear what a noble moralist said two thousand years ago: Plato reprehended severely a young man for entering into bad company; 'Why,' said he, 'do you reprehend me so sharply for so small a matter?' Plato replied, 'Custom is no small matter.'

"Troy was won by trial. In our honest endeavours and abilities we have certainty, but not in the favour of others, or the good winds of fortune: the one is a much greater good than the other.

"That which cometh unto us without our own virtue, yieldeth not that commendation and reputation.

"Fly, then, the pleasures which will bite to-morrow.' Why should a man be in love with his fetters, though of gold?

"A man by nature runs into herbs or weeds: therefore, let him seasonably water the one, and destroy the other.

"The virtue of prosperity is temperance; the virtue of adversity is fortitude.

"It is a lofty saying, 'The advantages of prosperity are to be wished; but the advantages of adversity are to be admired.'—(Bacon).

"More water glideth by the mill than wots the miller of.—(Shakespeare).

"If an hour is lost in the morning, a man is seeking it all day long. Early he should rise, and go to his work and his workmen; on the Master's eye half the estate depends.'—(Edda).

"The master's foot is manure to the estate.'—(Spanish).

"The gains of ordinary trade are honest, and furthered by two things: chiefly by diligence, and by a good name for good and fair dealing.'—(Bacon).

"Happy is the man who is an early riser.' Our good King George the Third and his Royal Family, and our gracious Queen Victoria, with Prince Albert, and their children, set an example in that respect to her subjects. —(Wilkinson).

"Early to bed and early to rise,  
Makes a man healthy, wealthy, and wise.'  
—(Ray.)

<sup>1</sup> The Penny: a Blessing or a Curse. An Essay treated Proverbially. London: Cradock & Co., 1852.



"'Plough deep while sluggards sleep,  
You will have corn to sell and keep.'"  
—(Franklin)."

We recommend this little book of practical wisdom to all, and especially to Students of the Law, whose friends will do them a kind service by presenting each with a copy, and an admonition to ponder on and diligently adopt its maxims.

## SERVICE OF CLERKSHIP.

WHERE THE ATTORNEY RESIDES AT A  
DISTANCE.

"A Constant Subscriber" requests to know whether a clerk under articles, serving part of his time at a branch office where the attorney does not reside but comes occasionally—say weekly—would be considered good service, and whether any objection could be made to the clerk's admission on account thereof.

[We think the service of an articulated clerk at a place where the attorney does not reside, and where he goes only once a week, will not be sufficient. The Judges require that the clerk should be personally instructed and his service superintended by the attorney.—ED.]

## PAYMENT OF FEES BY STAMPS.

OFFICES FOR DISTRIBUTION.

To the Editor of the Legal Observer.

SIR,—Whatever arrangements are proposed for a distribution of stamps to be taken in lieu of payments for the future, it is to be hoped that a distribution office or offices will be opened near the neighbourhood where such expenditure must of necessity take place, and that no additional tax will be allowed to be charged thereon as is now the case in Bankruptcy. The 1s. search fee in the neighbourhood of Chancery Lane is 1s. 1d.; in the City 1d. only additional is charged. If this is not looked to, we shall have the 4d. stamp bearing at least a charge of 6d. or 1s.

E.C.

## MOOT POINT.

LONDON SMALL DEBTS ACT.

To the Editor of the Legal Observer.

SIR,—As a subscriber *ab initio*, I beg to submit to your readers the following question upon the 15 Vict. c. 77 (Local—London Small Debts). Which is law? the 119th or the 120th section of that Statute?

J. C.

## RECENT DECISIONS IN THE SUPERIOR COURTS. AND SHORT NOTES OF CASES.

### Lord Chancellor.

*In re Hewitson; Torbuck v. Hewitson.* July 28, 1852.

TRUSTEES' ACT, 1850.—VESTING ORDER.—LEGAL ESTATE IN COPYHOLDS.—MARRIED WOMAN.

An order was made under the 13 & 14 Vict. c. 60, s. 3, vesting the legal estate in certain copyhold property—held by a lunatic trustee (though not so found by commission) in trust for a married woman to her separate use for life, with a power of disposition by will, but without any restraint as to alienation or anticipation,—in the mortgages to whom she and her husband were desirous of conveying the same.

This was a special case under the 13 & 14 Vict. c. 35. A petition had been presented under the 13 & 14 Vict. c. 60, s. 3, for an order to vest in the mortgagees the legal estate in certain customary freeholds in the manor of Kirkby Stephen, Westmoreland, which were held by Mr. Hewitson as trustee for Mrs. Torbuck—Mr. Hewitson having become of unsound mind, though not so found by inquisition. Under the deed of trust the property was held on trust for Mrs. Torbuck to her separate use for life with a power of disposing by will, but without any restriction as

to alienation or anticipation, and in the event of her surviving her husband without appointing to her absolutely. They were desirous of conveying the fee to the mortgagee. The petition was directed at the hearing, on May 5 last, to stand over to file a special case as to the custom of the manor. It appeared that it was the custom for the steward to examine a married woman as to her consent in conveying the fee, and to endorse such consent on the conveyance, upon which the alienee was admitted at the next Court.

Toller in support.

The Lord Chancellor (without calling on Bickner for the lunatic trustee) said, as the custom of the manor was not to admit on surrender, the provisions of the 3 & 4 Vict. c. 77, did not apply, and that Mrs. Torbuck had barred her power of appointment. An order would therefore be made as prayed.

### Lord Justices.

*Kuthoven v. Cobb.* July 29, 1852.

PRODUCTION OF DOCUMENTS.—PRIVILEGED COMMUNICATION.—PARTIES IN SAME INTEREST.

The defendants and third parties had brought actions at law against the plaintiff to re-

cover principal and interest of money lent, on security of the deposit of certain bonds in a company, but which the plaintiff alleged had been actually transferred. The third parties obtained the opinion of counsel thereon, and furnished the defendants with a copy: Held, dismissing with costs an appeal from Vice-Chancellor Parker, that the plaintiff was not entitled to production of such ease and opinion.

THIS was an appeal from Vice-Chancellor Parker (decided on June 9 last). It appeared that nine bonds in the Copper Miners' Company had been deposited by the plaintiff with his bankers, and that seven were afterwards handed to the Misses Hoyle, and two to the defendants, Messrs. Cobb. It was alleged that the deposits were to secure the amount of the bonds, but the plaintiff contended there had been an actual transfer. Misses Hoyle and the defendants had brought actions at law against the plaintiff, to recover the amount of principal and interest, and the former had taken the opinion of counsel as to their rights—giving a copy to the defendants—production of which was sought by the plaintiff, but withheld by them on the ground of privilege.

*Wigram* and *Rawlinson* in support; *Malins* and *Karslake*, contra, were not called on.

The following cases were cited: *Storey v. Lord George Lennox*, 1 Keen, 341; 1 Myl. & K. 525; *Whitbread v. Gurney*, 1 You. 541; *Bolton v. Corporation of Liverpool*, 2 Sim. 467; 1 Myl. & K. 88; *Greenough v. Gaskell*, ib. 98; *Deborough v. Rawlins*, 3 Myl. & Cr. 518; *Knight v. Marquis of Waterford*, 2 Y. & C., Eq. Exch. 22; *Sawyer v. Birchmore*, 1 Keen, 391; 3 Myl. & K. 572; *Greenlaw v. King*, 1 Beav. 137; *Combe v. City of London*, 4 Y. & C., Ch. Ca. 139; *Curling v. Perring*, 2 Myl. & K. 380; *Flight v. Robinson*, 8 Beav. 22; *Goodall v. Little*, 1 Sim. N. S. 155; *Glyn v. Causfield*, 3 M'N. & G. 463; *Holmes v. Baddeley*, 6 Beav. 521; 1 Phill. 176; *Pearse v. Pearse*, 1 De G. & S. 12.

The Lords Justices said, the defendants had no right as between themselves and third persons to produce the documents in question, as the interests of the Misses Hoyle and their rights therein required that their use should be limited to the purposes for which they were communicated to the defendants, and the plaintiff was precluded from demanding their production. The appeal was therefore dismissed with costs.

### Master of the Rolls.

*Davies v. Davies.* July 20, 1852.

CLAIM.—MULTIFARIOUSNESS AND MISJOINDER.—NEXT FRIEND.

An objection was overruled to a claim, filed by the plaintiff on his own and his children's behalf, for multifariousness and misjoinder, for the purpose of getting in and securing certain property to which he was entitled after the death of a testator's

widow and the children in the event of his prior decease.

THIS was a claim filed by the plaintiff on his own behalf and as next friend of his children, for the purpose of getting in and securing certain property left on the death of the testator's widow and upon the death of his father and mother (which had occurred), among his four sisters and brother, the plaintiff, or their children.

*R. Palmer* and *Elderton* for the defendant, the testator's widow and executrix, took an objection of multifariousness and of misjoinder; *James*, contra.

The Master of the Rolls overruled the objection, on the ground that the interests of the parties and their claims were not inconsistent, as all had an interest in having the funds ascertained and secured, and no question respecting the division could arise until after the defendant's death.

### Vice-Chancellor Turner.

*Edlestone v. Collins.* April 22, 23; August 6, 1852.

MARRIED WOMAN.—SURRENDER TAKEN BY INFANT DEPUTY STEWARD OF COPYHOLDS.—FORECLOSURE.

The conditional surrender of a married woman of certain copyhold property to secure a mortgage was taken by the deputy steward, who it appeared was under the age of 21: Held, no objection to the validity of the surrender, and in a foreclosure suit the usual decree was made.

In this foreclosure suit it appeared that a conditional surrender of certain copyhold property had been made by a married woman to secure re-payment of advances, but that the deputy steward who took the same and examined her was an infant under the age of 21.

The question arose, whether the surrender was void.

Sir *W. Page Wood* and *Smythe* for the plaintiff; *Glasse* and *Beales* for the defendants.

*Cur. ad. vult.*

The Vice-Chancellor said, that in practice the office of taking the separate examination of a married woman was ministerial and not judicial, being constantly delegated, and the Commissioners' report was acted upon without ever inquiring whether any of them might chance to be an infant. The surrender could not therefore be treated as a nullity, and the usual decree must be taken.

### Vice-Chancellor Kindersley.

*In re Mais.* June 26, 30, 1852.

TRUSTEE ACT, 1850.—TRUSTEE OUT OF JURISDICTION.—REMOVAL OF.

The Court refused to remove a trustee and appoint another in his stead under the 13 & 14 Vict. c. 60, ss. 22, 32, on the mere ground of his being resident out of the jurisdiction.

G. W. Collins appeared in support of this petition under the 13 & 14 Vict. c. 60, for the appointment of a new trustee in the place of one who was resident in Jamaica out of the jurisdiction. He referred to ss. 22, 23, and cited *In re Hodgson's Settlement*, 15 Jur. 552.

The Vice-Chancellor said, the legislature never intended that because a trustee was out of the jurisdiction, possibly for a short time only, he should be summarily removed, and the petition would therefore be refused.

*In re Farmer.* July 1, 1852.

TRUSTEE ACT, 1850.—APPOINTMENT OF NEW TRUSTEE.—CONFIRMATION OF MASTER'S REPORT.—PRACTICE.

*Semble, that the proceeding to confirm the Master's report on a reference under the 13 & 14 Vict. c. 60, s. 41, is by motion, and not petition.*

C. Hall appeared in support of this petition, which sought the confirmation of the Master's report, on a reference to him under the 13 & 14 Vict. c. 60, s. 41, approving of a new trustee.

The Vice-Chancellor said, that the application for the purpose must be by motion, and not by petition.

Vice-Chancellor Parker.

*In re Reynolds.* June 26; July 3, 1852.

INFANT.—RECEIVER OF REAL ESTATES.—PETITION.

*Upon petition, a receiver was appointed of the rents of real estates belonging to an infant, without the institution of a suit.*

THIS petition was filed on behalf of an infant, by his next friend, and prayed the appointment of a receiver of real estates, to which he was entitled. It appeared that no suit had been instituted for the purpose.

Phillips in support, cited *In re Leeming*, 20 Law Journ. N. S., Ch. 550; *In re Gascoyne*, ib. 557.

The Vice-Chancellor made the order as prayed.

## Court of Exchequer.

*Black v. Gompertz.* April 15; June 7, 1852.

GUARANTEE.—ALTERATION BY ENDORSEMENT.—STATUTE OF FRAUDS.

*A guarantee was signed by the defendant to obtain the payment of two drafts for 200l. and 146l. due from C. to the plaintiff, and a memorandum of the receipt of such drafts was afterwards written across the same by the defendant, and signed by the plaintiff only, in which the amount of the 146l. draft was corrected to 150l.: Held, discharging with costs a rule for a new trial, that the endorsement must be taken to be authenticated by the signature to the memorandum, and was sufficient under the Statute of Frauds to render the defendant liable.*

THIS was a rule nisi for a new trial of this action which was brought against the defendant, on the following guarantee, signed by the defendant and directed to the plaintiff, and given upon the plaintiff supplying wines to Mr. M. J. O'Connell:—"Kensington, March 17, 1851. Dear sir,—Upon your handing me your two drafts on Morgan John O'Connell, Esq., M. P., respectively for 200l. and 146l.; at six months from this date, I undertake to get them accepted, and see that they are duly paid." And the following was written across the guarantee by the defendant, and signed by the plaintiff:—"I have received the two drafts, one being for 150l. instead of 146l., there being an error in the invoice of 4l.—both accepted by Mr. O'Connell." On the trial before L. C. B. Pollock, at the sittings in Michaelmas Term last, the plaintiff obtained a verdict.

Welsby, Q. C., and Pearce, showed cause against the rule, which was supported by Knowles, Q. C.

*Cur. ad. vult.*

The Court said, it might be inferred from the fact of the second memorandum being written on the same paper by the defendant, that it was authenticated by the signature, and it constituted, therefore, a sufficient memorandum in writing, signed by the defendant under the Statute of Frauds, and the rule was discharged.

## ANALYTICAL DIGEST OF CASES,

REPORTED IN ALL THE COURTS.

### Courts of Equity.

[For the previous Sections of the Digest in this Volume, see

*Privy Council*: Appeals, p. 17.

*House of Lords*: Appeals, p. 38.

*Courts of Equity*:

*Law of Attorneys and Solicitors*, p. 125.

*Contributories under the Winding-up Act*, p. 143.

*Law of Trustees*, p. 165.

*Lunacy*, p. 185.

*Law relating to Infants*, p. 186.

*Law relating to Charities*, p. 203.

*Appeals in Bankruptcy*, p. 225.

*Construction of Statutes*, pp. 104, 286, 306, 325.

*Law of Wills*, pp. 346, 367, 386, 406.

*Husband and Wife*, p. 426, 446.]

### LAW OF HUSBAND AND WIFE.

[Continued from p. 428.]

MARRIAGE SETTLEMENT.

1. *Separate use in future as well as present*

*coverture.—Anticipation.—Charge on life interest.*—By a post-nuptial settlement a sum of money, the property of the wife, was vested in trustees, upon trust to pay the income as the wife should from time to time appoint, not by way of anticipation; and, in default of appointment, to the wife for her separate use, independent of G., her husband; and from and after her death, to G., the husband, for life; and from and after the death of the survivor, to the children of the marriage, as therein mentioned; and, if there should be no children, and the wife should survive G. the husband, the whole trust property to be paid to her; and if G., the husband, should survive the wife, then at his death, as the wife should appoint, or, if no appointment, to her next of kin: *Held*, that, although no reference was made in the settlement to any future *coverture*, still the trust for the separate use of the wife, and the clause against anticipation, protected the interest of the wife during a second marriage, and that a charge by her and her second husband upon her life interest in the trust property was invalid. *In re Gaffee's settlement*, 1 H. & T. 635; 1 M.N. & G. 541.

If the restriction forms part of the only sentence which gives any estate, and is in words made part of the gift, then the estate and the restriction must be commensurate. *In re Gaffee's settlement*, 1 M.N. & G. 541.

*2. Covenant to insure.—Times where trusts arose.*—By the terms of a marriage settlement, 1,000*l.*, secured by a policy of insurance on the life of the intended wife's father, was to be paid to the intended husband, provided he had previously effected an insurance on his own life for a similar amount; if not, it was to be paid to the wife. It then directed that, if the insurance should not have been effected, or if the husband and wife should be both dead when the 1,000*l.* should be received by the trustees, it should be paid to the issue of the marriage. The husband covenanted to effect an insurance within six months after the decease of the wife's father, to secure the payment of the said sum of 1,000*l.* at his decease. By a clause at the end of the settlement, it was directed that, in default of the husband effecting the insurance, the 1,000*l.* should be invested, and the interest paid to the husband until he effected it, and then he was to receive the principal. The insurance was not effected within the time mentioned: *Held*, that the husband might effect the insurance at any time during his life; that the trusts in favour of the wife did not arise till the close of the life of the survivor of her father and husband, and that the trusts in favour of the children did not arise till after the death of all three,—viz., the father, the husband, and the wife.

The dividends of the 1,000*l.* were therefore directed to be paid, during the life of the husband to his mortgagees, or until he should effect the insurance; and, if he effected an insurance, the principal was to be applied in payment of the mortgage debt, and the residue to be paid to the husband, or the parties claim-

ing under him. *Bush v. Watkins*, 14 Beav. 425.

*3. Omission to declare a life interest in the wife if she survived her husband.—Implication.*—A marriage settlement declared the trusts of a sum of money to be, that, during the joint lives of the husband and wife, the dividends should be paid to the wife for her separate use; and if she should die in the husband's lifetime, the principal sum should be transferred to him absolutely; and if the husband should die in the wife's lifetime, then the same should be held in trust for such person as the wife should by will appoint. The wife survived the husband: *Held*, that the wife took, by implication, a life-interest in the trust-fund. *Allin v. Crawshaw*, 9 Hare, 382.

Case cited in the judgment: *Tunstall v. Trappes*, 3 Sim. 312.

*4. Collaterals.—Stipulations in favour of.*—The cases in which collaterals are not within the consideration of a marriage settlement, proceed upon the ground that the wife cannot be considered to stipulate on the part of the relations of the husband; but limitations in favour of collaterals are supported, if there be any party to the settlement who purchases on their behalf. *Heap v. Tonge*, 9 Hare, 104.

Case cited in the judgment: *Pulvertoft v. Pulvertoft*, 18 Ves. 92.

#### MISJOINDER.

A bill was filed by husband and wife partly in respect of the wife's separate estate; but she sued by her next friend. An objection for misjoinder was overruled. *Meddowcroft v. Campbell*, 13 Beav. 184.

#### MORTGAGE.

*Separate estate.—Mortgagee in possession.—Costs.*—A husband and wife, by deed (acknowledged), demised freeholds of the wife to a mortgagee by way of trust, the trusts being to apply the rents and profits in payment of certain premiums on insurance, and of the interest on the mortgage debt, and then in reduction of the principal, until it should be paid off. The husband took the benefit of the Insolvent Act: *Held*, in a suit for redemption instituted by the assignee in insolvency against the mortgagee, that the latter was chargeable with the surplus rents which he permitted to be received by the insolvent's wife for her maintenance,—the principles established by *Sturgis v. Champneys*, 5 Myl. & Cr. 97, not extending to such a case. But there being ground for supposing that the Court would have made such a provision for the wife, the Court, although the balance was found against the mortgagee, decreed payment without costs. *Clark v. Cook*, 3 De G. & S. 333.

#### NEXT FRIEND.

*1. Feme covert.*—A defendant cannot act as next friend of a plaintiff *feme covert*. *Payne v. Little*, 13 Beav. 114.

Case cited: *Anon*, 11 Jur. 258.

*2. Costs on dismissal of bill.*—In 1849, a

bill was filed, purporting to be exhibited by a married woman suing in respect of her separate estate by a person named as her next friend, but who, it afterwards appeared, had died two days before the bill was filed. A year afterwards, a new next friend was, without his knowledge, substituted for the deceased. The plaintiff's solicitor afterwards became insolvent and left the country. A notice of motion to dismiss the plaintiff's bill for want of prosecution, with costs, was served on the agent of the insolvent, the solicitor for the plaintiff in the cause; and thereupon an order was made, dismissing the bill with costs, to be paid by the new next friend. Upon a motion by the new next friend to vary the order, by charging the costs on the plaintiff's solicitor, or to limit the liability of the new next friend to the payment of costs whilst he was on the record as such: *Held*, that the notice of the motion to dismiss had been sufficiently given by service on the agent of the plaintiff in the cause, and that the form of the order, charging all the costs on the new next friend, was correct. *Bligh v. Tredgett*, 5 De G. & S. 74.

#### PAROL TRUST.

*Fraud on marital right.*—A woman, a few days before her marriage, and without the knowledge of her intended husband, transferred a sum of stock to trustees upon a parol trust, as alleged by the trustees, for her separate use for life, and after her death for the benefit of her children. The fact of this transfer became known to the husband some time after the marriage. The dividends were received by the wife from the date of the marriage until her death, which took place 17 years after. After her death the husband filed a bill, praying a transfer of the stock, and containing a statement that the dividends were duly paid to the wife during the coverture: *Held*, under the circumstances, that the husband was precluded from asserting his claim to the stock as having been transferred in fraud of his marital right. *Loader v. Clarke*, 2 M'N. & G. 382.

#### PORTIONS.

*Settlement.*—*Construction.*—By a marriage settlement dated 1787, 1,000*l.*, the wife's property, was vested in trustees, in trust for the wife and her husband, for their lives, successively, and, after their several deceases, and the death of the survivor of them, in case there should be any child or children of the body of the husband or the body of the wife, lawfully begotten, which should be then living, in trust to pay the 1,000*l.* unto such children, equally, and, if there should be but one such child living, then in trust for such only child, and to be paid to such child or children at their respective ages of 21, and, in the meantime, the interest of each child's share to be applied for its maintenance; and, in case there should be no such child living at the death of the survivor of the husband and wife, or in case of there being such and all of them should die before they should attain 21, then the 1,000*l.*

to be in trust for the wife's father. By a deed dated in 1793, the wife's father made a voluntary settlement of leaseholds of 500*l.* stock, in trust for the wife for life, remainder in trust for all her children then born or thereafter to be born who should be living at her decease equally, and to be assigned and paid to them at their respective ages of 21, and, in the meantime, the income to be applied for their maintenance; and, if any of them should die before their shares should become payable or assignable, their shares to go to the survivors; and, in case all the children should die under 21, the property to be in trust for the settlor. The husband and wife had three children. The wife survived the husband. Two of the children died in her lifetime; one of them having attained 21. The third attained 21 and survived the wife.

*Held*, that that child was entitled to the whole of the property comprised in the deeds. *Jeffery v. Jeffery*, 17 Sim. 26.

#### POWER.

1. *Tenant for life.*—*Alienation of interest under settlement.*—*Consent to re-sale.*—The trustees of a marriage settlement were empowered to invest the trust funds in land, and, afterwards, to re-sell the lands, with the consent of the tenant for life. After the trustees had invested part of the funds in land, the tenant for life conveyed his interest under the settlement to a purchaser, by the description of all his life and other estate and interest in all the moneys, stocks, funds, and securities, and messuages, lands, tenements, and hereditaments into which the moneys, stocks, funds, and securities were or at any time thereafter might be converted and changed.

*Held*, that the tenant for life's power to consent to a re-sale of the lands, was not destroyed by the alienation of his interest under the settlement. *Warburton v. Farn*, 16 Sim. 625.

2. *Tenant for life of trust fund.*—*Execution of.*—A tenant for life of a trust fund, with power to appoint the reversion to a child, appointed a portion of the reversionary fund to a daughter absolutely, by a deed to which the daughter, the daughter's husband, and the trustees of the fund were parties; and by the same deed she assigned her life interest in the appointed portion to the daughter absolutely. By a subsequent witnessing part, it was expressed to be agreed and declared by and between all the parties, that the appointed portion should be held on trust for the daughter's separate use, during her life, and afterwards on trusts for her husband and children: *Held*, that (independently of any question as to the merger of the life estate), the trust for the separate use was good. But *quære*, whether the limitations of the subsequent interests were effectual. *Trollope v. Routledge*, 1 De G. & S. 662.

[To be continued.]

# The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

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SATURDAY, OCTOBER 9, 1852.
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## JURISDICTION IN BANKRUPTCY.

### PROPOSED TRANSFER TO THE COUNTY COURTS.

It is stated, upon authority deserving of attention, that Lord St. Leonards has adopted Lord Brougham's notion as to the expediency of transferring the administration of the Bankrupt Laws from the Commissioners to the County Court Judges, and that a Bill is in course of preparation, to be submitted to Parliament early in the approaching Session, for the purpose of effecting this arrangement. Although the concurrence of the Lord Chancellor is a significant fact, and confers a practical importance upon the scheme, from which some may be disposed to augur its probable success, even Lord St. Leonards' approval does not divest the measure of those features which render it so unsatisfactory, and indeed objectionable to the commercial community. Until the proposed change has obtained the sanction of the Legislature, its merits may be fairly and usefully discussed; and even after the principle has been irrevocably determined upon, practical difficulties may be obviated or removed by a candid consideration of their magnitude. To assist our readers in forming their own judgment upon the question about to be agitated, let us shortly advert to the system under which the Bankrupt Law is at present administered, before inquiring how far its defects are likely to be remedied by a transfer of jurisdiction to the County Court Judges.

As most of our readers are aware, the administration of the Bankrupt Laws, in the first instance, is now intrusted to seventeen Commissioners, five of whom attend at Basinghall Street and perform the duties of the Metropolitan District,

which includes, not only the Metropolis, but a circle of one hundred miles around it, whilst the remaining twelve Commissioners are appointed to the country districts, known respectively as the Bristol, Birmingham, Exeter, Liverpool, Leeds, Manchester, and Newcastle-upon-Tyne districts. To the Court of each Commissioner is attached a Registrar, two Official Assignees, a Messenger, and an Usher. There are also the Accountant in Bankruptcy, the Chief Registrar, and a Taxing Master, with their subordinates. The Commissioners of Bankruptcy are, without any exception, barristers of many years' standing, well known to the Profession and the public. The Registrars are either barristers or solicitors, and the Official Assignees are selected from gentlemen who have been engaged in mercantile business. Under the Absconding Debtors' Arrest Act, 1851, (14 & 15 Vict. c. 52,) the Commissioners of Bankruptcy in the country have authority, concurrently with the Judges of the County Courts, to grant warrants for the arrest of absconding debtors, and under the Debtor and Creditor Arrangement Act, (7 & 8 Vict. c. 70,) the Commissioners of Bankruptcy have an exclusive jurisdiction; but, with these inconsiderable exceptions, the functions of a Bankrupt Commissioner are confined to adjudicating upon the cases of traders made bankrupt, and superintending the distribution of the assets of such traders. Some of the officers of the Court of Bankruptcy, namely, the Commissioners and Registrars, are paid by salaries; whilst the Official Assignees and Messengers are remunerated wholly by fees or allowances; and the suitors also contribute<sup>1</sup> to the expenses of the Court of Bankruptcy, by

<sup>1</sup> Under the Bankrupt Law Consolidation, 12 & 13 Vict. c. 106, s. 48.

Payments in the shape of stamps in lieu of fees,—the most oppressive of which is, a stamp of 10*l.* upon the initiative proceeding, now called the petition for adjudication.

It has frequently been pointed out in these pages, and may be taken as admitted, that the Court of Bankruptcy does not altogether fulfil the expectations, or, within its own peculiar province, satisfy the requirements of the commercial and trading community. Hence, we presume, it is, that in so many instances the affairs of insolvent traders are wound up or administered without the intervention of the Court, under deeds of inspection and other private arrangements, which are frequently of a questionable character. The law, the manner in which it is administered, and the constitution of the Court, have all tended in different proportions to influence bankrupt traders and their creditors to avoid resorting to the Court of Bankruptcy whenever such a course is possible. At present, we are chiefly interested with the objections to the constitution of the Court.

No one acquainted with the extent and importance of the business which falls legitimately within the province of the Court of Bankruptcy, and certainly no person engaged in trade or commerce, denies that it is expedient to have a *commercial tribunal* specially engaged in investigating the conduct and transactions and administering the affairs of insolvent traders. What is alleged, and with some show of reason, is, that the officers of the Court of Bankruptcy are underworked and over-paid, and that the districts are so arranged that the inhabitants of many large towns are virtually precluded from availing themselves of the benefit of the law, by personal attendance at the Courts of the Commissioners, either for the purpose of asserting claims or establishing complaints. Assuming these grounds of dissatisfaction to be well founded, the mercantile public insist, that an adequate remedy may be found without abolishing the Court of Bankruptcy, pensioning off the Commissioners and officers, and transferring the business to another class of officials wholly unacquainted with the duties, and who have already abundant claims on their time and attention! Let the remuneration of the Commissioners and officers of the Court of Bankruptcy, it is said, be proportioned to the nature and value of the public services they perform, and if their duties afford inadequate occupation, other duties of an analogous character may be readily sug-

gested, which experience would enable them to discharge with a moderate increase of personal labour, and to the manifest advantage of the public. The winding up of insolvent public companies, and the administration of the assets of deceased persons dying in insolvent circumstances, seem properly to fall within the jurisdiction of those who superintend the administration of the Bankrupt Laws; and now that the principles are established, by judicial decisions of the Superior Courts and of the Court of ultimate Appeal, upon which cases of this nature are hereafter to be governed, the objections which formerly existed to the transfer of jurisdiction from the Court of Chancery to the Bankrupt Commissioners would probably cease to prevail.

At all events, the merchants of London, Liverpool, Bristol, and the other great towns, conceive that they will have serious ground for complaint if the numerous and complicated questions arising out of bankruptcies are to be adjudicated upon by the Judges of Small Debts Courts, in common with disputed or undisputed shop bills, and petty actions of tort in which the expected damages do not exceed 5*l.* The prompt and rapid exercise of a summary authority in respect of the goods of a trader immediately after the commission of an act of bankruptcy, has become indispensably necessary, as the facilities to quit the kingdom multiply; and the operation of the Bankrupt Laws in such cases will be paralysed, unless the active creditor knows where to find the Judge whose warrant enables him to secure the property or person of his debtor. As the County Court districts are at present arranged, many of the Judges are required to make a circuit of several towns during each month, the stay of the Judge in each town being proportioned to the amount of business to be disposed of. A creditor presenting a petition for adjudication in bankruptcy must not be required to hunt after the County Court Judge from one town to another, or to wait until the learned functionary returns from his circuit.

To render the proposed transfer practicable or endurable, certain of the *County Court Judges must be stationary in the large towns*, and in attendance daily during the ordinary hours of business, as the Bankrupt Commissioners now are. The value and efficiency of the services of the Official Assignees are duly appreciated by the trading community, and we shall be curious to learn how the continuance of these services is to be secured if the bankruptcy jurisdic-

tion is to be distributed amongst the 60 County Court Judges. It is impossible to contemplate the appointment of an Official Assignee to each Judge, and the duties cannot be satisfactorily discharged either by the bailiff of a County Court or by the County Court clerk. The Official Assignee, as well as the Judge adjudicating in Bankruptcy, must be constantly in attendance at an appointed place. How these exigencies are to be provided for, without increasing the number of County Court Judges, as well as other officials, is not at present suggested. The omnipotence of Parliament is, of course, relied upon to confer on the County Court Judges the practical knowledge, experience, and acquaintance with the Law of Bankruptcy, necessary for the efficient discharge of the novel duties it is now proposed to impose upon them; but enough has been stated to satisfy the professional reader, that even the ability and zeal of the County Court Judges may be insufficient to render the proposed transfer of jurisdiction acceptable to the suitors in bankruptcy, or advantageous to the public.

intention to submit or resist. The actions which are constantly found not to afford matter for litigation, and therefore pass as undefended, are those brought to enforce the payment of debts, or damages, where the amount is liquidated.

In this most extensive class of cases, it is now felt to be unnecessary that there should be a writ and a declaration accompanied by particulars of demand. It is conceived that in such cases the ends of justice will be more speedily attained, and at less cost, by *uniting the particulars of demand and the writ, and dispensing with a declaration* altogether. The Common Law Commissioners did not think it expedient to dispense with the writ and begin in every case with the declaration, but they suggested a plan the practical operation of which is, to give the plaintiff, in an undefended action, the benefit of a judgment at the earliest stage, without requiring a declaration to be filed or delivered. This suggestion of the Common Law Commissioners is embodied in the 25th and 27th sections of the Act 15 & 16 Vict. c. 76, (printed *ante*, p. 392,) and appears to have met very general approval.

By the former of these sections, in all cases where the defendant resides within the jurisdiction, and the claim is for a debt or liquidated money demand arising upon a contract, the plaintiff may indorse upon the writ of summons and copy thereof, the particulars of his claim, which is to be considered as particulars of demand. Under the last-mentioned section, where the writ of summons is indorsed with particulars and has been personally served, or that a Judge has given leave to proceed without actual personal service, the plaintiff, in default of appearance, may at once sign final judgment for a sum not exceeding that indorsed on the writ, with interest and costs as fixed, and the plaintiff may, upon such judgment, issue execution, at the expiration of eight days from the last day for appearance and not before. It is provided, however, that either before or after final judgment, the defendant may be let in to defend upon *satisfactorily accounting for omitting to appear* in due course, and disclosing a *defence upon the merits*.

It will be observed, that the special indorsement of particulars of demand on the writ, is intended to operate only in that extensive class of cases where the defendant does not deem it expedient to require the plaintiff to prove his claim. When the defendant enters an appearance in the pre-

## ANNOTATIONS ON THE COMMON LAW PROCEDURE ACT, No. III.

### INDORSEMENT OF PARTICULARS ON WRIT.

The Courts of Law are more frequently resorted to for the purpose of procuring satisfaction for admitted claims, than with the view of asserting contested rights. More than a moiety of all the actions commenced in the Superior Courts of Law are settled before plea. Up to a certain stage, however, the process is identical, where it is found necessary to investigate facts, and in cases affording no materials for judicial investigation. The form of writ and declaration respectively, are similar, whether the defendant submits to the plaintiff's demand, or is prepared to resist it. It is manifestly expedient, and not unjust, that it should be ascertained, *at the earliest possible period*, whether the defendant desires to litigate the plaintiff's claim. If the defendant does not require that the demand made against him should become the subject of investigation, the forms of legal procedure are superfluous; but it is essential that the defendant should be apprised of the nature and limits of the claim the Court is called upon to enforce, before he is required to submit to it, and he must have the opportunity afforded for announcing his



scribed form and in due time, the plaintiff must declare and proceed as if the writ had been in the ordinary, and not the special, form, but the particulars of demand indorsed on the writ need not be re-delivered with the declaration. It will also be observed, that the proceeding by special indorsement on the writ, is not intended to apply to any of the cases provided for by the Act, where the defendant resides beyond the jurisdiction. In such cases, it would be unsafe to deprive an absent defendant of the security obtained by an assessment of damages by a jury under a writ of inquiry, or a reference to the Master, before final judgment.

The 25th section contains various examples of the description of actions to which the provisions authorising a special indorsement of particulars of demand on the writ are applicable. The instances enumerated are, actions "on a bill of exchange, promissory note, or cheque, or other simple contract debt, or on a bond or contract under seal for payment of a liquidated amount of money; or on a Statute where the sum sought to be recovered is a fixed sum, or in the nature of a debt; or on a guarantee, whether under seal or not, where the claim against the principal is in respect of such debt or liquidated demand, bill, cheque, or note." But it appears quite clear that these instances are only given by way of example, and that the provisions relating to the special indorsement of particulars are applicable, whenever the action is brought to recover "a debt or liquidated demand in money, with or without interest, arising upon a contract express or implied."

The *form of particulars* to be specially indorsed on the writ, is not required to be different from that ordinarily used when particulars of demand are delivered with the declaration. In cases where interest is payable in addition to the debt, it is expected that the plaintiff should state that he claims interest on the sum specified as the amount of the debt "from the date of the writ until judgment." A notice is also to be appended to a writ specially indorsed, intimating that if a defendant served with such writ, *within* the jurisdiction of the Court, does not appear according to the exigency thereof, the plaintiff will be at liberty to sign judgment and issue execution at the expiration of eight days from the last day of appearance. It is also to be remembered, that the special indorsement of particulars on the writ does not supersede the necessity for indorsing the amount

of debt and costs as required by the 8th section of the Act (*ante*, p. 375), and it is expressly notified in the Schedule (A. No. 4), that the special indorsement of particulars may be inserted *after* the indorsement required by the 8th section. The *sum to be indorsed for costs* is to be a fixed sum, settled by the Masters, subject to the approval of the Judges, without any reference to the nature or particular circumstances of the demand, and if the plaintiff claims any sum beyond that fixed by the Rule of Court, the costs must be taxed in the ordinary way.

Where the writ of summons, indorsed with particulars in the special form provided by the Act, has been personally served, and no appearance entered by the defendant within the period allowed by the writ, the plaintiff, at the expiration of eight days after service of the writ, should file an affidavit of personal service, together with a copy of the writ upon which he will be entitled, without more, to sign final judgment, and the entry of such judgment embodies the special particulars as indorsed on the writ and records that the defendant has not appeared (Sched. A., No. 5). On this judgment no proceeding in error lies.

When the defendant has not been personally served with the writ of summons specially indorsed, and has not appeared, final judgment under the 27th section can only be signed where a Judge's order has been obtained for leave to proceed as if service had been effected, an order which, we apprehend, the Judges will not in general grant, unless satisfied that the writ, though not actually served, has come to the defendant's knowledge.

After final judgment has been signed, and upon the expiration of eight days from the last day of appearance, the plaintiff may issue execution, either against the person or goods of his debtor.

We have been thus minute in referring to the proceedings requisite to give effect to the special provisions as to indorsing particulars of demand on the writ, because the practice introduced by these provisions is altogether new, and we participate in the general expectation that their operation will effect a decided improvement, by materially diminishing the expense and shortening the time required to obtain judgment in undefended actions.

## NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

### COMMON LAW PROCEDURE.

15 & 16 VICT. c. 76.

[*Concluded from p. 441, ante.*]

#### COURTS OF COMMON PLEAS AT LANCASTER AND PLEAS AT DURHAM.

230. All the powers given by this Act to the Judges of the said Superior Courts at Westminster to make rules and regulations for the execution of this Act, and to frame writs and proceedings for that purpose; and to the Judges of the said respective Courts to make rules or orders for the government and conduct of the ministers and officers thereof; and all other powers by this Act given to or vested in the Judges of the said Superior Courts at Westminster to be exercised by more than one of them, except the powers and authority given by the said Act of Parliament passed in the Session of Parliament held in the 13 & 14 Vict., intituled "An Act to enable the Judges of the Courts of Common Law at Westminster to alter the Forms of Pleading," shall and may be exercised by the respective Judges of the said Court of Common Pleas at Lancaster and Court of Pleas at Durham, being Judges of one of the said Common Law Courts at Westminster, or any two of them, with respect to the said Court of Common Pleas at Lancaster and Court of Pleas at Durham respectively, and the ministers and officers thereof, and matters and proceedings therein, within the jurisdiction of the same Courts respectively; and all powers under this Act exercisable by any one Judge of the Superior Courts at Westminster shall and may be exercisable by one Judge of the said Superior Courts of the said Counties Palatine, being also a Judge of one of the said Courts at Westminster, as to matters and proceedings in the said Superior Courts of the said Counties Palatine.

231. It shall and may be lawful to and for the Judges of each of the said Courts of Common Pleas at Lancaster and Pleas at Durham, being Judges of one of the Superior Courts at Westminster, or any two of them, from time to time to make rules and orders for applying any of the other provisions of this Act to the said respective Superior Courts of the said Counties Palatine, and matters and proceedings therein and parties thereto, with such modifications and alterations with reference to the constitution and peculiar circumstances of each Court, as they may think fit and reasonable; and for modifying any of the provisions hereby applied to such last-mentioned Courts respectively with reference to such constitution and peculiar circumstances; and from time to time to rescind, amend, or alter such rules or orders; and that such rules or orders, subject to such power of rescission, amendment, and alteration, shall have the same force as if the same were made by and embodied in this Act.

232. Provided always, That all the provisions of this Act applicable to Masters of the said Courts at Westminster shall apply to the respective prothonotaries of the Court of Common Pleas at Lancaster and Court of Pleas at Durham, and their respective deputies, who may singly exercise, with reference to matters and proceedings in the last-mentioned Courts respectively, the powers hereby given to any one or more of the Masters of the Superior Courts at Westminster; and that such respective officers shall record the proceedings of trials of causes depending in the said respective Courts, and draw up and return *postea* on records from the Superior Courts at Westminster, tried in the said Counties Palatine respectively, and officiate at the trial of such causes therein as heretofore.

233. Provided also, as to proceedings in error, that the Court of Queen's Bench shall still be the Court of Error from the said Court of Common Pleas at Lancaster and Court of Pleas at Durham; and that it shall be sufficient to transmit to the said Court of Queen's Bench a transcript of the record of any judgment or proceedings in those Courts on which error is alleged; and that the judgment of the Court of Queen's Bench thereon shall be certified by one of the Masters of the said Court of Queen's Bench on the said transcript, or by rule of Court, as the said Court may direct; and that thereupon such judgment shall be entered on the original record in the said respective Courts of Common Pleas at Lancaster and Pleas at Durham; and such further proceedings as may be necessary thereon shall be awarded by the said respective Courts, subject to the right of either party to allege errors in the said judgment in the said Court of Queen's Bench, and proceed thereon as provided by this Act in the case of errors alleged in actions depending in that Court.

234. From the time when this Act shall commence and take effect so much of a certain Act of Parliament passed in the 4 & 5 Wm. 4, c. 62, intituled "An Act for improving the Practice and Proceedings in the Court of Common Pleas of the County Palatine of Lancaster," and so much of a certain other Act of Parliament passed in the 2 & 3 Vict. c. 16, intituled "An Act for improving the Practice and Proceedings of the Court of Pleas of the County Palatine of Durham and Sadberge," as relate to the duration of writs; and to alias and pluries writs, and to the proceedings necessary for making the first writ in any action available to prevent the operation of any statute whereby the time for the commencement of any action may be limited, shall be repealed, except so far as may be necessary for supporting any writs that have been issued before the commencement of this Act, and any proceedings taken or to be taken thereon; but that the other provisions of the said last-mentioned Acts of Parliament, so far as they are not altered by or inconsistent with the provisions of this Act, shall remain in force.

235. In citing this Act in any instrument,

document, or proceeding, it shall be sufficient to use the expression "The Common Law Procedure Act, 1852."

236. Nothing in this Act shall extend to Ireland or Scotland, except in the cases herein specially mentioned.

**SCHEDULE (A.) REFERRED TO IN THE FOREGOING ACT.**

**No. 1.**

*Writ where the defendant resides within the Jurisdiction.*

VICTORIA, by the grace of God, &c.  
To C. D. of in the county of

We command you, that within eight days after the service of this writ on you, inclusive of the day of such service, you do cause an appearance to be entered for you in our Court of in an action at the suit of A. B.; and take notice, that in default of your so doing the said A. B. may proceed therein to judgment and execution. Witness, &c.

*Memorandum to be subscribed on the writ.*

N. B.—This writ is to be served within (six) calendar months from the date thereof, or, if renewed, from the date of such renewal, including the day of such date, and not afterwards.

*Indorsement to be made on the writ before service thereof.*

This writ was issued by E. F. of attorney for the said plaintiff, or, This writ was issued in person by A. B., who resides at [mention the city, town, or parish, and also the name of the hamlet, street, and number of the house of the plaintiff's residence, if any such].

*Indorsement to be made on the writ after service thereof.*

This writ was served by X. Y. on L. M. [the defendant or one of the defendants], on Monday the day of 18 (Signed) X. Y.

**No. 2.**

*Writ where the defendant, being a British subject, resides out of the jurisdiction.*

VICTORIA, by the grace of God, &c.  
To C. D. of in the county of

We command you, That within [here insert a sufficient number of days within which the defendant might appear, with reference to the distance he may be at from England] days after the service of this writ on you, inclusive of the day of such service, you do cause an appearance to be entered for you in our Court of in an action at the suit of A. B.; and take notice, that in default of your so doing, the said A. B. may, by leave of the Court or a Judge, proceed therein to judgment and execution. Witness, &c.

*Memorandum to be subscribed on the writ.*

N. B.—This writ is to be served within (six) calendar months from the date thereof, or, if renewed, from the date of such renewal, including the day of such date, and not afterwards.

*Indorsement to be made on the writ before the service thereof.*

This writ is for service out of the jurisdiction of the Court, and was issued by E. F. of attorney for the said plaintiff, or, This writ was issued in person by A. B., who resides at [mention the city, town, or parish, and also the name of the hamlet, street, and number of the house of the plaintiff's residence, if any such].

*The indorsement required by the 8th section should be made on this writ, but should allow the defendant the time limited for appearance to pay the debt and costs.*

**No. 3.**

*Writ where the defendant, not being a British subject, resides out of the Jurisdiction.*

VICTORIA, by the grace of God, &c.  
To C. D. late of in the county of

We command you, That within [here insert a sufficient number of days within which the defendant might appear, with reference to the distance he may be at from England] days after notice of this writ is served on you, inclusive of the day of such service, you do cause an appearance to be entered for you in our Court of in an action at the suit of A. B.; and take notice, that in default of your so doing the said A. B. may, by leave of the Court or a Judge, proceed therein to judgment and execution. Witness, &c.

*Memorandum to be subscribed on the writ.*

N. B.—Notice of this writ is to be served within (six) calendar months from the date thereof, including the day of such date, and not afterwards.

*Indorsements as in other cases.*

**NOTICE of the foregoing writ.**

To G. H., late of [Brighton in the County of Sussex], or now residing at [Paris in France.]

Take notice, That A. B. of in the county of England, has commenced an action at law against you C. D., in her Majesty's Court of Queen's Bench, by a writ of that Court, dated the day of A. D. 18; and you are required, within days after the receipt of this notice, inclusive of the day of such receipt, to defend the said action, by causing an appearance to be entered for you in the said Court to the said action; and in default of your so doing the said A. B. may, by leave of the Court or a Judge, proceed thereon to judgment and execution.

[Here state amount of claim as required by 8th section, but allowing the defendant the time limited for appearance to pay debt and costs.]

(Signed) A. B. of &c.

or,  
E. F. of &c.

Attorney for A. B.

**No. 4.**

*Special Indorsement.*

[After the indorsement required by the

section of this Act, this special indorsement may be inserted.]

The following are the particulars of plaintiff's claim:—

|                                             |         |
|---------------------------------------------|---------|
| 1849.—June 30. Half-year's rent to £. s. d. |         |
| this day of house and premises              |         |
| in ——— Street, Westminster.                 | 25 10 0 |
| Sept. 12. Ten sacks of flour at 40s. .      | 20 0 0  |
| Dec. 1. Money received by defend-           |         |
| ant . . . . .                               | 17 0 0  |
|                                             | <hr/>   |
|                                             | 62 10 0 |
| Paid . . . . .                              | 15 0 0  |
|                                             | <hr/>   |
| Balance due . . . . .                       | 47 10 0 |

Or,

Balance due . . . . . 47 10 0

To butchers meat supplied between the 1st of January, 1849, and the 1st of January, 1850 . . . . . £52

Paid . . . . . 20

Balance . . . . . £32

[If any account has been delivered, it may be referred to, with its date, or the plaintiff may give such a description of his claim as in a particular of demand, so as to prevent the necessity of an application for further particulars.]

Or,

£50 principal and interest due on a bond dated the day of conditioned for the payment of 100l.

Or,

£90 principal and interest due on a covenant contained in a deed dated the day of to pay 100l. and interest.

Or,

A penalty of 100l. under the Statute 55 Geo. 3, c. 137.

Or,

£85 on a bill of exchange for 100l., dated the 2nd February, 1849, accepted or drawn or indorsed by the defendant.

Or,

£50 on a guarantee dated the 1st of January, 1850, whereby the defendant guaranteed the due payment by E. F. of goods supplied or to be supplied to him.

[To any of the above may be added, in cases where interest is payable, "the plaintiff also claims interest on £ of the above sum from the date of the writ until judgment."]

N. B.—Take notice, That if a defendant served with this writ within the jurisdiction of the Court do not appear according to the exigency thereof, the plaintiff will be at liberty to sign final judgment for any sum not exceeding the sum above claimed [with interest at the rate specified], and the sum of £ for costs, and issue execution at the expiration of eight days from the last day for appearance.

No. 5.

In the Queen's Bench :

On the day of A.D. 1850.

[Day of signing the judgment.]

England } A. B. in his own person [or, by  
to wit, } his attorney] sued out a writ of

summons against C. D., indorsed according to the "Common Law Procedure Act, 1852," as follows:—

[Here copy special indorsement.]

And the said C. D. has not appeared: Therefore it is considered that the said A. B. recover against the said C. D. £ together with £ for costs of suit.

No. 6.

In the Queen's Bench :

The day of in the year of our Lord 18 . . . . .

Yorkshire } Whereas A.B. has sued C.D., and  
to wit } affirms, and denies.

[Here state the question or questions of fact to be tried.]

And it has been ordered by the Hon. Mr. Justice , according to "The Common Law Procedure Act, 1852," that the said question shall be tried by a jury: therefore let the same be tried accordingly.

No. 7.

Form of rule or summons where a judgment creditor applies for execution against a judgment debtor.

[Formal parts as at present.]

C. D. show cause why A. B. [or as the case may be] should not be at liberty to enter a suggestion upon the Roll in the action wherein the said A. B. was plaintiff and the said C. D. was defendant, and wherein the said A. B. obtained judgment for £ against the said C. D. on the day of , that it manifestly appears to the Court that the said A. B. is entitled to have execution of the said judgment, and to issue execution thereupon, and why the said C. D. should not pay to the said A. B. the costs of this application, to be taxed.

[Note.—The above form may be modified so as to meet the case of an application by or against the representative of a party to the judgment.]

No. 8.

Form of suggestion that the judgment creditor is entitled to execution against the judgment debtor.

And now on the day of it is suggested and manifestly appears to the Court, that the said A. B. [or C. D., as executor of the last will and testament of the said A.B. deceased, or as the case may be] is entitled to have execution of the judgment aforesaid against the said E. F. [or against G. H., as executor of the last will and testament of the said E. F., or as the case may be]: Therefore it is considered by the Court that the said A. B. [or C. D., as such executor as aforesaid, or as the case may be] ought to have execution of the said judgment against the said E. F. [or against G. H., as such executor as aforesaid, or as the case may be.]

## No. 9.

*Form of writ of replevin.*

VICTORIA, by the grace of God, &c., to E. F. of greeting.

We command you that, within eight days after the service of this writ upon you, inclusive of the day of such service, you appear in our Court of \_\_\_\_\_ to show cause why A. B. [or C. D., as executor of the last will and testament of the said A. B. deceased, or as the case may be,] should not have execution against you [if against a representative, here insert, as executor of the last will and testament of

deceased, or as the case may be] of a judgment whereby the said A. B. [or as the case may be] on the \_\_\_\_\_ day of \_\_\_\_\_ in the said Court recovered against you [or as the case may be] £ \_\_\_\_\_; and take notice, that in default of your so doing the said A. B. [or as the case may be] may proceed to execution.

Witness, &c.

## No. 10.

In the Queen's Bench:

The \_\_\_\_\_ day of \_\_\_\_\_ in the year of our Lord 18 \_\_\_\_\_.

[The day of lodging note of error.]

A. B. and C. D.

The plaintiff [or defendant] says that there is error in law in the record and proceedings in this action; and the defendant [or plaintiff] says that there is no error therein.

(Signed, A. B., plaintiff.

[or C. D., defendant.]

[or E. F., attorney for plaintiff or defendant.]

## No. 11.

The \_\_\_\_\_ day of \_\_\_\_\_ in the year of our Lord 18 \_\_\_\_\_.

[The day of making the entry on the Roll.]

The plaintiff [or defendant] says that there is error in the above record and proceedings, and the defendant [or plaintiff] says there is no error therein.

## No. 12.

In the Queen's Bench:

The \_\_\_\_\_ day of \_\_\_\_\_ in the year of our Lord 18 \_\_\_\_\_.

[The day of lodging note of error.]

A. B. and C. D. in error.

The plaintiff [or defendant] says that there is error in fact in the record and proceedings in this action, in the particulars specified in the affidavit hereunto annexed.

(Signed) A. B., plaintiff.

[or C. D., defendant.]

[or E. F., attorney for plaintiff [or defendant.]

## No. 13.

## EJECTMENT.

*Form of writ.*

VICTORIA, &c., to X., Y., Z., and all persons entitled to defend the possession of [describe the property with reasonable cer-

teinty] in the parish of \_\_\_\_\_ in the county of \_\_\_\_\_ to the possession whereof A., B., and C., some or one of them, claim to be [or to have been on and since the \_\_\_\_\_ day of A.D. \_\_\_\_\_] entitled, and to eject all other persons therefrom: These are to will and command you, or such of you as deny the alleged title, within sixteen days after service hereof, to appear in our Court of \_\_\_\_\_ to defend the said property, or such part thereof as you may be advised; in default whereof judgment may be signed, and you turned out of possession.

Witness, &c.

## No. 14.

*Judgment in Ejectment in case of non-appearance.*

In the Queen's Bench:

The \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_.

[Date of writ.]

Lancashire } On the day and year above writ-  
to wit. } ten, a writ of our lady the  
Queen issued forth of this Court in these words; that is to say,

VICTORIA, by the grace of God [here copy the writ]; and no appearance has been entered or defence made to the said writ: Therefore it is considered that the said [here insert the names of the persons in whom title is alleged in the writ] do recover possession of the land in the said writ mentioned, with the appurtenances.

## No. 15.

In the Queen's Bench:

On the \_\_\_\_\_ day of \_\_\_\_\_ A.D. 18 \_\_\_\_\_.  
Cumberland } On the day and year above writ-  
to wit. } ten, a writ of our lady the  
Queen issued forth of this Court, in these words; that is to say,

VICTORIA, by the grace of God [here copy the writ]; and C. D. has, on the \_\_\_\_\_ day of \_\_\_\_\_ appeared by \_\_\_\_\_ his attorney [or in person] to the said writ, and has defended as a part of the land in the writ mentioned; that is to say [here state the part], and no appearance has been entered or defence made to the said writ, except as to the said part: Therefore it is considered that the said A. B. [the claimant] do recover possession of the land in the said writ mentioned, except the said part, with the appurtenances, and that he have execution thereof forthwith; and as to the rest, let a jury come, &c.

## No. 16.

In the Queen's Bench:

On the \_\_\_\_\_ day of \_\_\_\_\_ A.D. 18 \_\_\_\_\_.  
Cumberland } On the day and year above writ-  
to wit. } ten, a writ of our lady the  
Queen issued forth of this Court, in these words; that is to say,

VICTORIA, by the grace of God [here copy the writ]; and C. D. has, on the \_\_\_\_\_ day of \_\_\_\_\_ appeared by \_\_\_\_\_ his attorney [or in person], to the said writ, and defended as

the whole of the land therein mentioned: Therefore let a jury come, &c.

No. 17.

Afterwards on the \_\_\_\_\_ day of \_\_\_\_\_ A.D. before \_\_\_\_\_ and \_\_\_\_\_ justices of our lady the Queen assigned to take the Assizes in and for the within county, come the parties within mentioned; and a jury of the said county being sworn to try the matters in question between the said parties, upon their oath say, that *A. B.* [the claimant] within mentioned, on the \_\_\_\_\_ day of \_\_\_\_\_ A.D. was, and still is, entitled to the possession of the land within mentioned, as in the writ alleged: Therefore, &c.

No. 18.

In the Queen's Bench: On the \_\_\_\_\_ day of \_\_\_\_\_ 18 . [Date of writ.]

Lancashire } On the day and year above writ-  
to wit. } ten, a writ of our lady the Queen  
issued forth of this Court, in these words;  
that is to say,

VICTORIA, by the grace of God [here copy the writ]; and *C. D.* has, on the \_\_\_\_\_ day of \_\_\_\_\_ appeared by his attorney [or in person] to the said writ, and *A. B.* has discontinued the action: Therefore it is considered that the said *C. D.* be acquitted, and that he recover against the said *A. B.* £ for his cost of defence.

No. 19.

In the Queen's Bench: The \_\_\_\_\_ day of \_\_\_\_\_ 18 . [Date of writ.]

Lancashire } On the day and year above writ-  
to wit. } ten, a writ of our lady the Queen  
issued forth of this Court, in these words;  
that is to say,

VICTORIA, by the grace of God [here copy the writ]; and *C. D.* has, on the \_\_\_\_\_ day of \_\_\_\_\_ appeared by his attorney [or in person] to the said writ, and *A. B.* has failed to proceed to trial, although duly required so to do: Therefore it is considered that the said *C. D.* be acquitted, and that he recover against the said *A. B.* £ for his costs of defence.

No. 20.

In the Queen's Bench: The \_\_\_\_\_ day of \_\_\_\_\_ 18 . [Date of writ.]

Lancashire } On the day and year above writ-  
to wit. } ten, a writ of our lady the Queen  
issued forth of this Court, in these words;  
that is to say,

VICTORIA, by the grace of God [here copy the writ]; and *C. D.* has, on the \_\_\_\_\_ day of \_\_\_\_\_ appeared by his attorney [or in person] to the said writ, and the said *C. D.* has confessed the said action [or has confessed the said action as to part of the said land, that is to say, here state the part]: Therefore it is considered that the said *A. B.* do recover pos-

session of the land in the said writ mentioned [or of the said part of the said land], with the appurtenances, and £ for costs.

No. 21.

In the Queen's Bench: The \_\_\_\_\_ day of \_\_\_\_\_ A.D. 18 .

[Date of writ.]

Yorkshire } On the day and year above written,  
to wit. } a writ of our lady the Queen  
issued forth of this Court, with a notice there-  
under written, the tenor of which writ and  
notice follows in these words; that is to say,

[Here copy the writ and notice, which latter may be as follows:]

"Take notice, that you will be required, if ordered by the Court or a Judge, to give bail by yourself and two sufficient sureties, conditioned to pay the costs and damages which shall be recovered in this action."

And *C. D.* has appeared by his attorney [or in person] to the said writ, and has been ordered to give bail, pursuant to the statute, and has failed so to do: Therefore it is considered that the said [here insert name of landlord] do recover possession of the land in the said writ mentioned, with the appurtenances, together with £ for costs of suit.

SCHEDULE (B.)

Forms of pleadings.

STATEMENTS OF CAUSES OF ACTION.

On contracts.

1. Money payable by the defendant to the plaintiff for [these words money payable, &c. should precede money counts like 1 to 14, but need only be inserted in the first] goods bargained and sold by the plaintiff to the defendant.
2. Work done and materials provided by the plaintiff for the defendant at his request.
3. Money lent by the plaintiff to the defendant.
4. Money paid by the plaintiff for the defendant at his request.
5. Money received by the defendant for the use of the plaintiff.
6. Money found to be due from the defendant to the plaintiff on account stated between them.
7. A message and lands sold and conveyed by the plaintiff to the defendant.
8. The goodwill of a business of the plaintiff, sold and given up by the plaintiff to the defendant.
9. The defendant's use, by the plaintiff's permission, of messages and lands of the plaintiff.
10. The defendant's use, by the plaintiff's permission, of a fishery of the plaintiff.
11. Fines payable by the defendant as tenant of customary tenements of the manor of \_\_\_\_\_ to the plaintiff as lord of the said manor, for the admission of the defendant into the said customary tenements.

12. The hire of [as the case may be], by the plaintiff let to hire to the defendant.

13. Freight for the conveyance by the plaintiff for the defendant at his request of goods in ships.

14. The demurrage of a ship of the plaintiff kept on demurrage by the defendant.

15. That the defendant on the day of A. D., by his promissory note, now over-due, promised to pay to the plaintiff £ two months after date, but did not pay the same.

16. That one A., on, &c. [date], by his promissory note, now over-due, promised to pay to the defendant, or order, £ [two] months after date; and the defendant indorsed the same to the plaintiff; and the said note was duly presented for payment, and was dishonoured, whereof the defendant had due notice, but did not pay the same.

17. That the plaintiff, on, &c., [date], by his bill of exchange now over-due, directed to the defendant, required the defendant to pay to the plaintiff £ two months after date; and the defendant accepted the said bill, but did not pay the same.

18. That the defendant, on, &c. [date], by his bill of exchange, directed to A., required A. to pay to the plaintiff £ [two] months after date; and the said bill was duly presented for acceptance, and was dishonoured, of which the defendant had due notice, but did not pay the same.

19. That the plaintiff and defendant agreed to marry one another, a reasonable time for such marriage has elapsed, and the plaintiff has always been ready and willing to marry the defendant, yet the defendant has neglected and refused to marry the plaintiff.

20. That the plaintiff and defendant agreed to marry one another on a day now elapsed, and the plaintiff was ready and willing to marry the defendant on that day, yet the defendant neglected and refused to marry the plaintiff.

21. That the defendant, by warranting a horse to be then sound and quiet to ride, sold the said horse to the plaintiff, yet the said horse was not then sound and quiet to ride.

22. That the plaintiff and the defendant agreed by charter-party, that the plaintiff's ship called the "Ariel" should with all convenient speed sail to R., or so near thereto as she could safely get, and that the defendant should there load her with a full cargo of tallow or other lawful merchandize, which she should carry to H., and there deliver, on payment of freight £ per ton, and that the defendant should be allowed 10 days for loading, and 10 for discharge, and 10 days for demurrage, if required, at £ per day; and that the plaintiff did all things necessary on his part to entitle him to have the agreed cargo loaded on board the said ship at R., and that the time for so doing has elapsed, yet the defendant made default in loading the agreed cargo.

23. That the plaintiff let to the defendant a house, No. 401, Piccadilly, for seven years, to hold from the day of A. D.

at £ a year, payable quarterly, of which rent quarters are due and unpaid.

24. That the plaintiff by deed let to the defendant a house, No. 401, Piccadilly, to hold for seven years from the day of A. D., and the defendant by the said deed covenanted with the plaintiff well and substantially to repair the said house during the said term [according to the covenant], yet the said house was during the said term out of good and substantial repair.

#### For Wrongs independent of Contract.

25. That the defendant broke and entered certain land of the plaintiff, called the Big Field, and depastured the same with cattle.

26. That the defendant assaulted and beat the plaintiff, gave him into custody to a policeman, and caused him to be imprisoned in a police office.

27. That the defendant debauched and carnally knew the plaintiff's wife.

28. That the defendant converted to his own use, or wrongfully deprived the plaintiff of the use and possession of the plaintiff's goods; that is to say, iron, hoop, household furniture [or as the case may be].

29. That the defendant detained from the plaintiff his title-deeds of land called Belmont, in the county of ; that is to say [describe the deeds].

30. That the plaintiff was possessed of a mill, and by reason thereof was entitled to the flow of a stream for working the same, and the defendant, by cutting the bank of the said stream, diverted the water thereof away from the said mill.

31. That the plaintiff was the first and true inventor of a new manufacture, that is to say, of "certain improvements in the manufacture of sulphuric acid," and thereupon her Majesty Queen Victoria, by letters patent under the Great Seal of England, granted the plaintiff the sole privilege to make, use, exercise, and vend the said invention within England for the term of 14 years from the day of A. D.

, subject to a condition that the plaintiff should within six calendar months next after the date of the said letters patent cause to be enrolled in the High Court of Chancery, an instrument in writing under his hand and seal, particularly describing and ascertaining the nature of his said invention, and in what manner the same was to be and might be performed, and the plaintiff did within the time prescribed fulfil the said condition, and the defendant during the said term did infringe the said patent right.

32. That the defendant falsely and maliciously spoke and published of the plaintiff the words following; that is to say, "he is a thief;"

[if there be any special damage, here state it with such reasonable particularity as to give notice to the defendant of the peculiar injury complained of: for instance,]

whereby the plaintiff lost his situation as gamekeeper in the employ of A.

33. That the defendant falsely and maliciously printed and published of the plaintiff in a newspaper called " " the words following; that is to say, "he is a regular prover under bankruptcies," the defendant meaning thereby that the plaintiff had proved and was in the habit of proving fictitious debts against the estates of bankrupts, with the knowledge that such debts were fictitious.

#### COMMENCEMENT OF PLEA.

34. The defendant by his attorney [or in person] says [*here state the substance of the plea*].

35. And for a second plea the defendant says [*here state the second plea*].

#### *Pleas in Actions on Contracts.*

36. That he never was indebted as alleged. [*This plea is applicable to declarations like those numbered 1 to 14*].

37. That he did not promise as alleged. [*This plea is applicable to other declarations on simple contracts, not on bills and notes, such as those numbered 19 to 22. It would be unobjectionable to use "did not warrant," "did not agree," or any other appropriate denial*].

38. That the alleged deed is not his deed.

39. That the alleged cause of action did not accrue within six years [*state the period of limitation applicable to the case*] before this suit.

40. That before action he satisfied and discharged the plaintiff's claim by payment.

41. That the plaintiff at the commencement of this suit was, and still is, indebted to the defendant in an amount equal to the plaintiff's claim, for [*here state the cause of set-off, as in a declaration; see forms ante*], which amount the defendant is willing to set-off against the plaintiff's claim.

42. That after the alleged claim accrued, and before this suit, the plaintiff by deed released the defendant therefrom.

#### *Pleas in Actions for Wrongs independent of Contract.*

43. That he is not guilty.

44. That he did what is complained of by the plaintiff's leave.

45. That the plaintiff first assaulted the defendant, who thereupon necessarily committed the alleged assault in his own defence.

46. That the defendant, at the time of the alleged trespass, was possessed of kind the occupiers whereof for twenty years before this suit enjoyed as of right and without interruption a way on foot and with cattle from a public highway over the said land of the plaintiff to the said land of the defendant, and from the said land of the defendant over the said land of the plaintiff to the said public highway, at all times of the year, for the more conve-

nient occupation of the said land of the defendant, and that the alleged trespass was a use by the defendant of the said way.

47. That the defendant, at the time of the alleged trespass, was possessed of land, the occupiers whereof for 30 years before this suit enjoyed as of right and without interruption, common of pasture over the said land of the plaintiff for all their cattle, levant and couchant, upon the said land of the defendant, at all times of the year, as to the said land of the defendant appertaining, and that the alleged trespass was a use by the defendant of the said right of common.

#### REPLICATIONS.

48. The plaintiff takes issue upon the defendant's 1st, 2nd, &c., pleas.

49. The plaintiff as to the second plea says [*here state the answer to the plea as in the following forms*].

50. That the alleged release is not the plaintiff's deed.

51. That the alleged release was procured by the fraud of the defendant.

52. That the alleged set-off did not accrue within six years before this suit.

53. That the plaintiff was possessed of land, whereon the defendant was trespassing and doing damage, whereupon the plaintiff requested the defendant to leave the said land, which the defendant refused to do; and thereupon the plaintiff gently laid his hands on the defendant in order to remove him, doing no more than was necessary for that purpose, which is the alleged first assault by the plaintiff.

54. That the occupiers of the said land did not for 20 years before this suit enjoy as of right and without interruption the alleged way.

#### NEW ASSIGNMENT.

55. The plaintiff, as to the and pleas, says, that he sues not for the trespasses therein admitted, but for trespasses committed by the defendant in excess of the alleged rights, and also in other parts of the said land and on other occasions, and for other purposes than those referred to in the said pleas.

[*If the plaintiff replies and new assigns, the new assignment may be as follows:*]

56. And the plaintiff, as to the and pleas, further says, that he sues not only for the trespasses in those pleas admitted, but also for, &c.

[*If the plaintiff replies and new assigns to some of the pleas, and new assigns only to the other, the form may be as follows:*]

57. And the plaintiff, as to the and pleas, further says, that he sues not for the trespasses in the pleas [*the pleas not replied to*] admitted, but for the trespasses in the pleas [*the pleas replied to*] admitted, and also for, &c.



## NOTICES OF NEW BOOKS.

*The Common Law Procedure Act, with numerous Notes, explanatory of its practical effect as to Process, Practice, and Pleading; and an Introductory Essay illustrative of the tendency of the New Measure to restore the Ancient System of Pleading.* By R. MORRIS, Esq., Barrister-at-Law, Assistant Master of the Court of Exchequer; and W. F. FINLASON, Esq., Barrister-at-Law. London: Stevens & Norton. 1852.

THE learned authors of this volume contend, that the tendency of the new Act is to restore the simplicity of the ancient system of Pleading:—

"That system (they observe) was founded upon truth; and it proceeded upon the principle of ascertaining the point in dispute, and determining the cause upon it, with the least possible risk of failure of justice through failure of proof. Hence the pleading was *general*, and proof was dispensed with until a point was arrived at, upon which both were agreed to rest the case. Thus Bracton laid it down that, either in a declaration or a plea, it was only necessary to *ground* or *found* the action or defence by stating precisely the fact which formed its *foundation*, and all the rest generally until it was ascertained what was really in dispute."

Accordingly, they maintain, that it is adopted as the fundamental principle of the present measure, that a pleading need only "set forth sufficient *ground* of action, defence, or reply." And, consistently with this, it is enacted, that the Court shall always give judgment according to the *very right* of the cause, without regarding, even in arrest of judgment, any imperfection, omission, or defect; that even on demurrer no objections are allowed, except such as are "substantial and material;" and at the trial all amendments may be made which are necessary to determine the "real question in controversy." Upon a fair construction of the Act, nothing is to be considered "substantial" or "material," either in pleading or in proof, except what is "necessary for the purpose of determining in the suit the real question in controversy between the parties," and they contend that such was the principle of ancient pleading, and that the present Act empowers the Courts to proceed upon this principle.

It is also observed by the authors that—

"The purposes of truth are farther favoured by the provision that, while on the one hand parties are to be permitted to plead or reply or

rejoin so many several matters as may be necessary to sustain the action, this is only to be by leave of the Court, upon *affidavit* of some *just ground* for so doing. And, again, there are enactments to prevent any failure of question through non-joinder or mis-joinder of parties, or mis-joinder of causes of action."

So much for the improvement in our system of *Pleading*. The authors next point out the alterations effected in the *Practice* of the Courts:—

"Foreigners, or British subjects residing abroad, may be sued;—a writ of summons or execution may be served in any county;—in cases of common money demands, judgment of default may be signed thereon, and is to be final without declaration;—the proceedings on default of appearance, or of proceeding to trial, are simplified;—the rule to plead, demand of plea, and similar formalities, are abolished.—For all technical purposes, forms of action are done away with, and all other matters of mere form;—a more simple and speedy procedure is substituted for the former proceeding upon *scire facias*; or in error;—error can be brought only within six years;—and execution may be sued within six years, without revivor of judgment. In ejectment, the fictitious character of the former system is removed; and the suit is carried on in a plain manner between real parties; though still with the disadvantage of their proceeding to trial without knowing what are the questions to be tried."

The Introduction contains a review of the ancient authorities on Pleading, and is a most learned and masterly dissertation on that subject. The notes, explaining the practical alterations effected by the Statute, are very full and valuable. Both the learned writer are peculiarly well prepared to expound this important Statute. Mr. Morris is the author of a "Digest of Practice Cases," and Mr. Finlason of "Leading Cases on Pleading." They thus conclude the Introduction:—

"Upon the whole, probably, the Profession will be of opinion with the Lord Chancellor, that so important a change in our system of Common Law Procedure, has not been passed since the time of Edward III., and that it cannot be but advantageous, because in so great a degree founded upon the principle solemnly affirmed by Parliament in that reign—that judgment should be given in substance, and not on form—and, because, to a considerable extent, it recognises and realises the principle, which, it is contended, is an infallible inference therefrom, that judgment is given on 'form and not upon substance,' when it is given upon any matter not the matter in dispute."

"If, upon any points, the measure does not recognise these sound and ancient principles, or fails to realise what it recognises, it is satisfactory to reflect, that the Legislature have

vested in the Judges a power of modifying and altering it, which, no doubt, will be usefully exercised. And it has been the earnest desire of the editors, by a careful consideration of the measure, in connexion with the history and principles of pleading, to assist, if possible, in enabling the Profession to arrive at a due appreciation, and co-operate in the satisfactory alteration and settlement, of a measure so important with reference to the administration of justice in this country: all their views being based upon the simple principle, that legal justice must be derived from *moral* justice, and that *truth* must be its foundation."

## LAW OF ATTORNEYS.

### TAXATION WITHOUT PREJUDICE TO DEFENCE.—RETAINER.—SIGNED BILL.

IN an action for business done by the plaintiff as an attorney, the defendant pleaded,—1st, *nunquam indebtedatus*; 2nd, payment. The defendant applied for leave to add to those pleas a plea that no signed bill had been delivered, but as the plaintiff's bill had been taxed, and the Master had made his allocatur, Mr. Justice Patteson would not allow such a plea to be pleaded. The object of having a signed bill delivered was to give the defendant an opportunity of having it taxed if he thought proper, which could not apply in this case, as the bill had been already taxed.

At the trial, the following order was put in, on the part of the plaintiff:—

"Upon hearing the plaintiff in person, and the attorneys or agents for the defendants, I do order that the bill of costs, charges, and payments for which this action is brought, be referred to the Master to be taxed *without prejudice to any defence the defendant may have to this action*, and that the plaintiff on such taxation give credit for all sums of money by him received from or on account of the defendant, and refund what, if anything, hath been overpaid, and that in the meantime all further proceedings be stayed."

On this order was indorsed the allocatur of the Master for 110*l.* 4*s.* 6*d.* The bill on which the Master had made the taxation was put in with his figures on it, ~~denoting certain items taxed off~~. It appeared from this bill that the business done consisted, *inter alia*, of attendances to conduct the defence of the defendant on examinations before magistrates, on which the defendant was charged with having stolen corn, and in conducting the defence of the defendant on his trial on three of these charges at the Staffordshire Epiphany Quarter Sessions, and preparing two in-

dictments, the one for conspiracy, and the other for perjury.

To prove the retainer and the business done, a witness was called, who stated that, by the desire of the defendant, he wrote a letter to the plaintiff (which was put in) to ask him to attend before the magistrates and conduct the defence of the defendant, and that the plaintiff did so, and that at three trials at the Stafford Sessions, Mr. Serjeant Allen and Mr. F. V. Lee acted as counsel for the defendant, and that the plaintiff was present instructing them as the attorney.

The briefs on those trials were put in with the signatures of the counsel to their fees, and the name of the plaintiff was also indorsed as attorney. In the plaintiff's bill of costs, charges were made for serving subpoenas on 17 witnesses for the trials. The witness was asked, whether on the trials, witnesses were examined for the defence, and their names, on which Lord Campbell, C. J., said,—“You need not go into all the items in the bill. It has been taxed by the Master, and I shall take his allowing an item in the bill as *prima facie* evidence that the business mentioned in that item was done, and if the other side mean to contend that this item has been allowed by mistake, and that the business mentioned in it was not done, it will be for them to show this.”

No further evidence was given of the business having been done; but there was no distinct evidence of any retainer as to the preparing of two indictments, the one for perjury, and the other for conspiracy, the charge for which was between 8*l.* and 9*l.*

The defence was, that the plaintiff undertook to do the whole of the business at the Quarter Sessions for 15*l.*, which had been paid him on the night before the trials; but as it appeared that the fees paid to the counsel and their clerks amounted to 13*l.* 19*s.* 6*d.*, which would leave the plaintiff only 1*l.* 0*s.* 6*d.* for doing business for which the Master, on taxation, considered him to be entitled to 73*l.*, it was contended on the part of the plaintiff that the sum of 15*l.* was a payment on account to the plaintiff to enable him to pay the fees to counsel.

Lord Campbell, C. J. “It is very usual, I believe, for the attorney to get from his client a sum for disbursements just before the trial.” Verdict for the plaintiff for 100*l.* *Whalley v. Glover*, 3 C. & K. 13.

## ATTORNEYS TO BE ADMITTED.

*Michaelmas Term, 1852.**Quærens Bench.**Clerks' Names and Residences.**To whom Articled, Assigned, &c.*

|                                                                                            |                                                                          |
|--------------------------------------------------------------------------------------------|--------------------------------------------------------------------------|
| Adye, Arthur, jun., 21, Gt. James-st.; Bradford, Wilts                                     | Wm. Stone, Bradford, Wilts                                               |
| Arnison, William Burra, 22, Great Percy-street, Pentonville; and Penrith                   | L. Harrison, Penrith                                                     |
| Ash, John Geo. Hele, Adelaide-rd., Hampstead; Elizabeth-street, Eaton-square               | W. Gorham, Tunbridge; F. J. Riddale, Gray's-inn                          |
| Aston, David, 15, Burton-crescent; Longton                                                 | G. L. Robinson, Longton                                                  |
| Atkins, John, jun., 9, York-terrace, Peckham                                               | J. Atkins, sen., White-hart-court, Lombard-street                        |
| Attifield, Edw. Beaufoy, 16, Featherstone-buildings                                        | C. Prothero, Newport                                                     |
| Babington, John, 37, Store-st., Bedford-sq.; Alfred-place                                  | E. Babington, Horncastle; J. Scott, Lincoln's-inn-fields                 |
| Ball, Charles, 17, Everett-street, Russell-square; Chester                                 | J. Walker, Chester.                                                      |
| Barker, Charles Munro, 24, Great Percy-street; Claremont-sq.; Canonbury-villas; Sunderland | J. J. Wright, Sunderland                                                 |
| Barlow, Charles, Manchester                                                                | J. Barlow, Manchester                                                    |
| Barnes, Arthur, Lichfield                                                                  | E. Boad, Lichfield                                                       |
| Barr, Frederick Horatio, 32, Swinton-st., Gray's-inn-road                                  | F. Talbot, Bedford-row                                                   |
| Baty, Isaac, Hexham                                                                        | C. Head, Hexham                                                          |
| Baxter, Dudley, 9, Devonshire-street, Queen-sq.; Windsor-terrace; Atherstone               | S. S. Baxter, Atherstone                                                 |
| Bayley, Charles Henry, 30, Clarence-st., Islington                                         | E. Caddick, West Bromwich                                                |
| Bayley, Edw. D'Oily, 14, Pakenham-st., Gray's-inn-road; Stockton-on-Tees                   | W. Bayley; H. Barnes; J. Dodds, Stockton-on-Tees                         |
| Beaumont, Henry, 63, Trinity-sq., Southwark                                                | W. N. Ottaway, Staplehurst                                               |
| Bell, John Leonard, 24, University-st, Bedford-square; Bourn, Lincolnshire                 | W. D. Bell, Bourn                                                        |
| Beloe, Wm. Alciphron, 5, Elizabeth-st., Han's-place                                        | W. B. Young, Hastings; J. Gregson, Angel-court                           |
| Berridge, Robert Bristow, 18, Ampton-st., Gray's-inn-road; Leicester                       | S. Berridge, Leicester                                                   |
| Bickersteth, John Pares, Willesden; Liverpool; Sefton                                      | R. Radcliffe; A. T. Squarey, Liverpool                                   |
| Blagg, Michael Ward, 9, Hunter-st., Brunswick-sq.; Cheadle                                 | J. M. Blagg, Cheadle                                                     |
| Blick, John, 3, Bury-place, Bloomsbury; Hill Court, Dodderhill, Worcestershire             | S. Tombs, jun., Droitwich                                                |
| Borini, John, Uak; Belgium                                                                 | M. Davis, Uak                                                            |
| Borradaile, Charles, Upper Tooting                                                         | H. Denton, Lincoln's-inn                                                 |
| Brundrit, Robert Wright, 9, Gray's-inn-square; Runcorn; Manchester                         | J. Stevenson, Manchester                                                 |
| Bunny, Edward William, Han's-place; Crosby-square; Spleen-hill, near Newbury; Newbury      | T. Bunny, Newbury                                                        |
| Burton, Edmund Chas., 6, St. James-pl.; Daventry                                           | E. S. Burton, Daventry                                                   |
| Butler, Josiah, Hunsworth, Yorkshire                                                       | J. Thompson, Bradford, Yorkshire                                         |
| Butlin, Thomas, 24, Great Smith-street, Westminster; Great College-street; Cowley-street   | G. Eddowes, Nottingham                                                   |
| Calthrop, Thomas Douais, 4, Upper-park-place, Blackheath-park; Spencer-place, Blackheath   | J. S. Rymer, Whitehall-place                                             |
| Cant, Thomas Gibson, 6, Soley-terrace, Pentonville; Penrith                                | J. Jameson, Penrith                                                      |
| Capes, Henry Hawkeley, Boroughbridge                                                       | W. Hirst, Boroughbridge                                                  |
| Carnell, Geo. Frederick, 5, Newman's-row, Lincoln's-inn-fields; Bedford-sq.; Sevenoaks     | T. Carnell, Sevenoaks                                                    |
| Cattwright, J. U. Hawkeley, Bawtry                                                         | F. H. Cartwright, Bawtry; T. C. Leitch, North Shields; W. Thorpe, Thorne |
| Cavell, Edward, 15, Mecklenburg-square                                                     | Smith & Son, Southampton-street, Bloomsbury.                             |
| Chamberlin, Charles Henry, Great Yarmouth                                                  | S. Palmer; H. Palmer, Great Yarmouth                                     |
| Child, Mark, Durham                                                                        | W. Brignal, Durham                                                       |
| Christmas, John Sanders, Cambridge; Oakley-sq.                                             | E. Foster, jun., Cambridge                                               |
| Clare, William, 50, Upper Albany-st.; Liverpool                                            | G. J. Duncan, Liverpool                                                  |
| Clark, Hy., 88, Guilford-st., Russell-sq.; Trowbridge                                      | J. Bush, Bradford, Wilts                                                 |
| Clarke, Frederick, Russell-square; Charlewood-pl.; Upper Montague-st.; Upper Gower-street  | C. Few, jun., Henrietta-street, Covent-garden.                           |
| Clarke, George, 4, Devonshire-st.; Queen-square; Ormond-st.; Worcester                     | T. Hyde, Worcester                                                       |

*Clerks' Names and Residences.*

*To whom Articled, Assigned, &c.*

|                                                                                        |                                                                                       |
|----------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------|
| Cobby, Cecil, 10, Warwick-st., Holborn; Brighton                                       | C. Cobby, Brighton                                                                    |
| Cockerill, Thomas Marshall, 10, Symond's-inn; Arthur-st.; Featherstone-bldgs.; Newport | H. Heane, Newport; W. Dean, Essex-street                                              |
| Cook, Charles Henry, 9, Grays-inn-square; Essex-court, Temple                          | C. Cook, New-inn                                                                      |
| Cotton, Stapleton, 82, Judd-st., Brunswick-sq.; New Milman-street                      | W. J. Grane, Bedford-row                                                              |
| Cowley, George Littlewood, Basford; Nottingham                                         | G. M. Cowley, Nottingham                                                              |
| Cranwick, Matthew, Leeds                                                               | J. Shackelton, Leeds                                                                  |
| Creswick, Nathl., jun., 24, Liverpool-street; Furnival's-inn; Sheffield                | H. Pashley, Sheffield                                                                 |
| Curtis, Thomas John, 35, Holford-sq., Pentonville                                      | C. A. Curtis, Abingdon                                                                |
| Daubeny, Robert, 15, Green-terrace, Clerkenwell; New Ormond-street; Bristol            | J. R. Hoyte, Bristol                                                                  |
| Davies, Edmund, jun., 2, St. Alban's-street, Hammer-smith; Wells                       | E. Davies, Wells                                                                      |
| Draper, Edward, 45, Vincent-square                                                     | H. D. Draper, Vincent-square, Westminster                                             |
| Drew, Charles Thomas, Balham-hill, Surrey                                              | S. Williams, Bedford-row                                                              |
| Dutton, James Roger, 13, North-crescent, Bedford-square; Birkenhead                    | J. S. Leigh, Luton Hor; W. Eaton, Liverpool                                           |
| Eastham, John, Mitton, near Clitheroe                                                  | R. Trappes, Clitheroe                                                                 |
| Edwards, Frs. John, 23, Bernard-st., Russell-square                                    | T. W. Davies, Leominster                                                              |
| Edwin, Wm., Bayldon-house, Walworth-common                                             | M. Cooper; G. Ade, High-street, Southwark                                             |
| Ellis, George, Leeds                                                                   | C. Naylor, Leeds                                                                      |
| Ellis, William Moreton, 9, Lower Calthorpe-st.; Walsall                                | H. Barnett, Walsall                                                                   |
| Fitch, George William, 36, Lansdowne-terrace, Westminster-road, Cambridge              | C. Francis, Cambridge                                                                 |
| Foster, Frs. Gostling, Highgate; 51, Berners-street                                    | Sir W. Foster, Norwich                                                                |
| Fox, John, jun., Sidmouth-st.; Ashborne; South-crescent; Guildford-street; Manchester  | J. Saunders, Manchester; J. Fox, Ashborne                                             |
| Franklin, James, Halifax                                                               | M. Stocks, Halifax                                                                    |
| Friend, Edwin, 6, Store-st., Bedford-sq.; Canterbury                                   | T. N. Wightwick, Canterbury                                                           |
| Frere, Horace, 5, Cunningham-place, St. John's-wood; Great Yarmouth                    | C. J. Palmer, Great Yarmouth                                                          |
| Fryer, Wm., 1, Dorset-cottages; Richmond-ter., Sandbach; Chatteris                     | W. Latham, Sandbach                                                                   |
| Fuller, Robert Good, 1, Waverley-place, Welling-ton-road; Stowmarket                   | J. Gudgeon, Stowmarket                                                                |
| Gee, William, Bishop's Stortford                                                       | W. Gee; M. H. Walker, Bishop's Stortford                                              |
| Gibson, Henry, Chipping Ongar                                                          | W. Gibson, Chipping Ongar                                                             |
| Green, Wm. Bowles, 3, North-place, Gray's-inn-road; Boston                             | W. P. Bowles, Boston                                                                  |
| Gundy, Charles, 21, New Ormond-street                                                  | J. W. Cowley, Buckingham; R. G. Chipperfield, Canterbury; L. Hicks, Gray's-inn-square |
| Gutteridge, Weichsel Frederick, 4, Regent-place, Brunswick-square                      | H. Vallance, Essex-street                                                             |
| Gwyn, John Thomas, Hall-street; River-street; Pylbroath; Carmarthen                    | J. B. Jeffries, Carmarthen                                                            |
| Hall, Wm., Champain, 8, Norland-terr., Notting-hill                                    | B. V. Hutchinson, Lincoln's-inn-fields                                                |

[The remainder of this List will be given in our next Number.]

**ANNUAL REGISTRATION OF ATTOR-NEYS.**

THE Forms of Declaration, under the 6 & 7 Vict. c. 73, may be had on application at the Office of the Incorporated Law Society, Chancery Lane.

The Members of the Profession are requested to be particular in filling them up, either by themselves, their partners, or their London Agents:—to send them to the office on as early a day as possible;—and to attend to the following

*Regulations:*

1. No Declaration can be acted upon which does not contain all the particulars required by the Act of Parliament.

2. Every Declaration must be delivered at

the Office six days before a Certificate can be granted.

3. No Certificate will be delivered out for the ensuing year till Saturday, November 20.

4. In the first six days commencing on Nov. 20, Certificates will be delivered only to such London Agents as shall in due time previously, have sent in the Declarations of themselves and their Country Clients, accompanied by a List thereof arranged in alphabetical order, and written on foolscap paper bookwise.

5. These six days will be appropriated among the London Agents, in the following order:—The Letters refer to the initial of the Agent's surname or that of the senior partner in the case of a Firm.

Those commencing with—

A, or B, . . . . . Nov. 20

|                                   |         |
|-----------------------------------|---------|
| C, D, E, or F, . . . . .          | Nov. 22 |
| G, H, I, or J, . . . . .          | 23      |
| K, L, M, N, O, or P, . . . . .    | 24      |
| Q, R, or S, . . . . .             | 25      |
| T, U, V, W, X, Y, or Z, . . . . . | 26      |

6. On every day subsequent to November 26, the Certificates will be delivered to the rest of the Profession.

7. The Fee of 1s. 6d. fixed by the Act for issuing each Certificate is to be paid on taking the same away.

As there are 10,000 Certificates to be prepared, it will facilitate the business of the Office, if the London Agents will send in their lists early.

## RECENT DECISIONS IN THE SUPERIOR COURTS, AND SHORT NOTES OF CASES.

### Lord Chancellor.

*Adey v. Arnold.* July 22, 23, 1852.

TRUSTEE. — BREACH OF TRUST. — SIMPLE CONTRACT DEBT.

*New trustees were appointed of a marriage settlement, and the funds were transferred to them upon the trusts of the settlement. One of the new trustees committed a breach of trust, in misappropriating trust moneys, and died leaving his co-trustee his executor: Held, dismissing with costs an appeal from Vice-Chancellor Lord Cranworth, that the estate of the deceased trustee was only liable to the breach of trust as a simple contract, and not as a specialty debt.*

THIS was an appeal from the decision of Vice-Chancellor Lord Cranworth. It appeared that trustees had been appointed of certain property settled upon the marriage of Mr. and Mrs. Anneley, and under the direction of the Court, the defendant, William Arnold, and his brother Thomas Arnold, were appointed new trustees. Thomas Arnold had misappropriated a sum of about 1,800*l.* of the trust funds, and it was sought, upon his death, to charge his estate, of which the defendant was executor, with the amount as a specialty debt. The Vice-Chancellor having held that the estate was only liable to a simple contract debt, this appeal was presented.

*Malins, Willcock, and Osborne*, in support; *Teed and Webb*, contra.

The following cases were cited: *Vernon v. Pawdrey*, 2 Atk. 119; *Barn. Ch. R.* 280; *Turner v. Wardle*, 7 Sim. 80; *Parker v. Young*, 6 Beav. 261; *Wood v. Hardisty*, 2 Coll. 542; *Cox v. Bateman*, 2 Ves. S. 19; *Bartlett v. Hodgson*, 1 T. R. 42; *Gifford v. Manley*, Ca. Temp. Talb. 109; *Benson v. Benson*, 1 P. Wms. 130; *Randall v. Lynch*, 12 East, 179; *Lord Montford v. Lord Cadogan*, 19 Ves. 635, 638; *Mavor v. Davenport*, 2 Sim. 227; *Duke of St. Albans v. Ellis*, 16 East, 352; *Salton v. Houston*, 1 Bing. 433.

The Lord Chancellor said, that as the deed of assignment from the old to the new trustee, did not contain any obligation which would amount to a covenant, but contained only a declaration that the fund was assigned upon the trusts of the settlement, the breach only amounted to a simple contract debt, and the appeal was accordingly dismissed with costs.

### Lords Justices.

*In re Monmouthshire and Glamorganshire Banking Company, ex parte Nicholas's Assignees.* July 29, 1852.

WINDING-UP ACTS. — CONSTRUCTION. — BANKRUPT-SHAREHOLDER. — PROOF FOR CALL.

Held, that the official manager is entitled to prove for the amount of a call on shares held by a bankrupt in a joint-stock company ordered to be wound-up, upon the construction of ss. 14 and 30 of the 12 & 13 Vict. c. 108.

JACOB JENKINS NICHOLAS, who held 50 shares in the above company, had been adjudged bankrupt in Nov. 1851, and in Jan. following, an order to wind-up the company was obtained. In Feb. he obtained his certificate, and a dividend of 10*s.* 6*d.* in the pound was declared, and on April 27, a call of 60*s.* per share was made by the Master, and the official manager was directed to tender proof for the amount before the Commissioner. Mr. Commissioner Stephen having rejected the proof, but allowed a claim to be entered, the official manager presented this appeal, and the assignees also moved to discharge the order for proof.

*Bethell and W. M. James* for the official manager, cited *Steward v. Greaves*, 10 M. & W. 711; *Dawson v. Farmer*, 30 Law Jour., N. S., Exch., 177.

*R. Palmer and Karalake* for the assignees.

The Lords Justices said, the question was, whether the general separate creditors of a bankrupt who held shares in a joint-stock company ordered to be wound-up, were in a different position to the separate creditors of a trader engaged in mercantile partnerships. Independently of the Winding-up Acts, it was clear that this proof could not be made in competition with the separate creditors. The case as to the effect of these Acts turned on the construction of ss. 14 and 30<sup>a</sup> of the 12 & 13

<sup>a</sup> Which enact, s. 14, that "if any contributory or alleged contributory be a bankrupt or insolvent, he shall be entitled to stand by his assignees, and in all proceedings against his estate under the said Act shall be sufficiently represented by such assignees;" and s. 30, that "where any contributory of the company is a bankrupt or insolvent, it shall be lawful for the official manager to prove in the matter of such bankrupt or insolvent for any balance ordered by the Master to be proved

Vict. c. 108. The effect of these enactments was to change the rights of the general separate creditors, and to admit the proof for the call in competition with them.

### Master of the Rolls.

*In re Guibert's Trust.* July 17, 1852.

TRUSTEE ACT, 1850.—APPOINTMENT OF NEW TRUSTEES.—POWER IN SETTLEMENT.—FOREIGNER.

The Court refused a petition under the 13 & 14 Vict. c. 60, for the appointment of new trustees, who were Frenchmen, of a fund paid into Court under the 10 & 11 Vict. c. 96, by the old trustees, who refused to invest in French securities, although there was a power in the marriage settlement of sale and investment in such securities upon the husband and wife's consent, and for the appointment of new trustees.

THIS was a petition under the 13 & 14 Vict. c. 60, for the appointment of new trustees of certain property settled on the marriage of Mons. Guibert and Ann his wife, with power to the trustees for the time being, with their consent, to sell out the funds and invest the proceeds in English or French government or real securities, and with a power to appoint new trustees. It appeared the parties were resident in Paris, and sought the investment of the trust funds in French securities, and the appointment as trustees of two Frenchmen. The trustees thereupon paid the fund into Court under the 10 & 11 Vict. c. 96.

*Baggallay* in support.

The Master of the Rolls said, that in the absence of authorities for the order, the petition must be dismissed.

### Vice-Chancellor Turner.

*South Eastern Railway Company v. Munn and others.* June 9; July 28, 1852.

RAILWAY COMPANY.—PURCHASE OF LANDS.—SPECIFIC PERFORMANCE.

A railway company agreed for the purchase of land from K., but upon the title not being made out, the money was paid into Court under the 8 Vict. c. 18. It appeared K. had only contracted to purchase the land from D. in 1836, but he had never paid the purchase-money, and had not continued in possession until the time of the agreement with the railway; Held, that the railway company were not entitled to enforce the contract against D.'s heir, and their bill was dismissed with costs as against him, and without costs as against K.

By an agreement, dated Sept. 1, 1848, the

against the estate of such contributory, and to take and receive dividends in respect of such balance in the matter of the bankruptcy or insolvency, as a separate debt due from such bankrupt or insolvent, and rateably with the other separate creditors."

plaintiffs agreed to purchase for 300*l.* of the defendant Knott, a piece of land in Spring Street, Deptford, for the purposes of their railway, but on the title not being properly made out, they paid the money into Court, under the 8 Vict. c. 18. It appeared that Knott had contracted to purchase the land in question from a Mr. Frederick Dewar in 1836, for 73*l.* 10*s.*, but the purchase-money was never paid, and the plaintiffs sought to enforce their contract with Knott against the defendant, Mr. George Dewar, as heir-at-law of the vendor to Knott.

*Baily and Simpson* for the plaintiffs; *Selwyn* for Knott; *Roll and Speed* for Dewar, contra.

*Cur. ad. vult.*

The Vice-Chancellor said, the question was whether Knott could now enforce his contract with Frederick Dewar, as the plaintiff's equity depended on that of Knott. It was alleged that he had been in possession up to the time of the sale to the company, but it appeared from the evidence, that although he had been originally let into possession he had not continued in possession ever since, and he was not rated in respect thereof in October, 1847. He had abandoned the contract and never paid the purchase-money, and the contract would never have been insisted on but for the increased value of the property, in consequence of the plaintiffs requiring it for their railway. The bill would therefore be dismissed with costs as against Mr. Dewar, but without costs as against Knott.

### Vice-Chancellor Kindersley.

*In re Bangle's Trust.* July 16, 1852.

TRUSTEE RELIEF ACT.—PETITION FOR PAYMENT OF DIVIDENDS TO TENANT FOR LIFE.—COSTS.

Upon the payment of moneys into Court under the 10 & 11 Vict. c. 96, the tenant for life petitioned for payment of the dividends to her for life, and for payment of the costs out of the corpus: Held, that the costs were payable out of her income.

Gore appeared in support of this petition, which was presented by the tenant for life of a fund paid into Court under the 10 & 11 Vict. c. 96, and sought the payment of the dividends to her for life, with a direction for the costs to come out of the fund.

The Vice-Chancellor said, the present application was analogous to a petition by a tenant for life of an ascertained and set-apart fund in an administration suit, and that the costs must therefore be paid out of the income of the petitioner, and not out of the corpus.

### Vice-Chancellor Parker.

*In re Jones' Trust.* July 10, 1852.

TRUSTEE ACT, 1850.—SURRENDER OF COPYHOLD LANDS.—WHERE TRUSTER CANNOT BE FOUND.

A petition was granted for the surrender of copyhold lands under the 13 & 14 Vict. c.

60, by a person in the stead of a solicitor, who had been declared a trustee thereof and ordered to convey, but whose address could not be discovered.

In this case a declaration had been made under the 13 & 14 Vict. c. 60, that a Mr. Phelps, a solicitor, of Newport, Monmouthshire, was trustee of certain copyhold lands,

and an order had been made for their surrender by him. It appeared, however, he had left Newport, and could not be found.

W. M. James now appeared in support of a petition for the appointment of a person to convey the lands in question in his stead.

The Vice-Chancellor made the order as prayed.

## ANALYTICAL DIGEST OF CASES,

REPORTED IN ALL THE COURTS.

### Courts of Equity.

[For the previous Sections of the Digest in this Volume, see

*Privy Council* : Appeals, p. 17.

*House of Lords* : Appeals, p. 38.

#### Courts of Equity :

Law of Attorneys and Solicitors, p. 125.

Contributories under the Winding-up Act, p. 143.

Law of Trustees, p. 165.

Lunacy, p. 185.

Law relating to Infants, p. 186.

Law relating to Charities, p. 203.

Appeals in Bankruptcy, p. 225.

Construction of Statutes, pp. 104, 286, 306, 325.

Law of Wills, pp. 346, 367, 386, 406.

Husband and Wife, p. 426, 446, 466.]

### LAW OF HUSBAND AND WIFE.

[Concluded from p. 446.]

#### POWER.

3. *Parol agreement.—Want of acknowledgment of deed not supplied by Court.*—By parol agreement before marriage, between the intended husband and wife, it was arranged that he should receive for his own absolute use a certain sum of money, part of the intended wife's property, and that the rest of her property should be enjoyed by her, and settled to her sole and separate use. The intended husband duly received the money, but no settlement was made on the intended wife. After the marriage, the wife, by her next friend, filed her bill, stating the above facts, and praying a declaration that she was entitled to the property for her separate use, and that the same might be conveyed and transferred accordingly. The husband, by his answer, admitted the ante-nuptial arrangement. Subsequently to the filing of the bill, a deed was prepared, to which the husband and wife were parties, which was recited to have been made in pursuance of the ante-nuptial arrangement, and by which the husband assigned and conveyed to the trustee all his right and interest in the wife's property for her sole and separate use, and empowering her to dispose thereof by deed or will, as if she had not been a married woman. The deed was not acknowledged by the wife pursuant to the provisions of the

Statute. She afterwards died, having previously made a will, whereby she gave the property to her husband and other parties. The husband and trustee then filed their bill of revivor and supplement against the heir-at-law of the deceased wife, and other parties, stating the above facts, and praying that the ante-nuptial arrangement might be decreed to be carried into effect, and that the heir-at-law might be decreed to convey all his estate and interest in her real estate, in conformity with the will, and (if necessary) that the want of an acknowledgment of the deed might be supplied by the Court, and that the will might be declared a good execution of the power given to the wife by the deed.

*Held*, first, that, under the circumstances stated, there was no case proved against the heir-at-law; secondly, that a parol agreement entered into before marriage, and nothing following thereon except the marriage, could not, on the true construction of the Statute of Frauds, be carried into effect by the Court; and thirdly, that the want of an acknowledgment of a deed would not be supplied by the Court, inasmuch as such a proceeding would destroy the guard which the law threw around married women for their protection against the influence of their husbands. *Lassence v. Tierney*, 2 H. & T. 115; 1 M'N. & G. 551.

4. *Aliquot parts appointed exceeding entirety.*—A donee of a power affecting two sums of stock of different descriptions, appointed a gross amount, part of one of them, and exceeding one-fourth part of it. Afterwards, she executed, successively, deeds purporting to appoint aliquot parts of both funds as one subject, and without noticing the previous appointment of the gross sum, which was never severed from the mass. The appointees comprised all the parties entitled, subject to the appointment, and the aliquot parts so appointed amounted to four-fifths, thus exceeding, with the earliest appointment, the entirety of one of the funds.

*Held*,—1. That the latest appointees were not entitled to put the earlier to their election, so that the excess might be made good out of the unappointed one-fifth of the unexhausted fund.

2. That the successive appointment of the aliquot parts operated upon aliquot parts of the whole of each fund, and that, therefore, the loss arising from the deficiency of the one

fund fell upon the last appointees. *Trollope v. Routledge*, 1 De G. & S. 662.

#### PROPERTY OF WIFE.

*At Law and in Equity.*—On the principle that marriage is a gift of the personal property of the wife to the husband, there is no distinction between property to which the wife is entitled in equity and property to which she is entitled at law. *Osborn v. Morgan*, 9 Hare, 432.

#### SECURITY FOR COSTS.

*Married woman.*—*Next friend.*—Security for costs ordered to be given in a suit in which a married woman was plaintiff by her next friend, the next friend being a labourer. *Stevens v. Williams*, 1 Sim. N. S. 545.

Cases cited in the judgment: *Pennington v. Alvin*, 1 Sim. & Stu. 264; *Drinan v. Mannix*, 3 Dru. & War. 154.

#### SEPARATE ESTATE.

1. *Engagements of married women.*—*Agreement for lease.*—A married woman, having separate property and living apart from her husband, entered verbally into an agreement to take a leasehold house for a term. The agreement was reduced to writing, and signed by the lessor's agent and handed to her. She retained it, but did not execute it or any counterpart. In letters, however, written by her and by her solicitors, it was referred to as an agreement, and she had entered into possession of the house. In a suit by the lessor to enforce payment of the rent according to the agreement as a charge upon her separate estate, the Court directed a reference as to the lessor's title. *Gaston v. Frankum*, 2 De G. and S. 561.

2. *Liberty to exhibit interrogatories for plaintiff's examination.*—The plaintiff filed his bill against the defendant, the sole executrix of her deceased husband, John Rideout. By the decree the plaintiff was declared a specialty creditor of the testator, and a reference was directed to take an account of what was due to him, accompanied by the ordinary directions contained in a creditor's suit. The defendant, under a settlement executed on her marriage with the testator, was entitled for her separate use to the dividends on a sum of 3*l*. per Cent. Consols. The defendant's trustees, through the medium of their bankers, received the dividends as the same accrued due, for a number of years, down to the date of the husband's death, and paid the same from time to time to the husband's bankers, to his account, the wife never asserting her right to receive the separate benefit thereof. The Master, by his report, found that the defendant had received a considerable sum of money, part of the testator's personal estate, including a sum of 556*l*., the amount of the balance in the hands of the testator's bankers at the time of his decease: *Held*, notwithstanding the testator was one of the three trustees under the wife's settlement, that the balance was part of the testator's personal estate, and not the separate estate of the defendant.

*Held* also, that the defendant, although executrix and universal legatee of the testator, was not entitled under the decree to exhibit interrogatories before the Master for the examination of the plaintiff, who was the only creditor of the testator, as to parts of the testator's personal estate which had come to his possession; but liberty was given to the defendant to raise the case for further inquiry, by petition to be brought on when the other exceptions to the report, which had not been discussed, were set down for hearing. *Caton v. Rideout*, 2 H. & T. 33; 1 M'N. & G. 599.

#### SETTLEMENT.

1. *Advancement.*—*Satisfaction.*—*Portions.*—By a settlement of trust funds for the benefit of a husband and wife for their lives, with remainder to the children of the marriage equally, it was provided, that if the husband should, during his life, advance or pay any moneys for or on account of the advancement or preferment in life of any child of the marriage, or in case any lands or tenements, moneys, goods, or chattels, should descend or come by or from him unto or for the benefit of any such child, then such moneys, goods, and chattels, and the value of such lands or tenements should be accounted as part or in full of the portion provided by the settlement, unless the husband should by writing declare the contrary.

*Held*, that the advances and payments referred to in the first part of the provision should be construed advances and payments made *inter vivos*, perfected in the lifetime of the husband; and that the lands, tenements, moneys, goods, or chattels, in the second part of the clause, should be confined to matters not perfected, or not having effect until after his death.

That property, which, during the coverture, accrued to the husband and wife, in right of the wife, and by a settlement, to which the husband and wife were parties, was settled upon them for their lives, with remainder to their children, as they or the survivor of them should appoint (but which was not otherwise received or reduced into possession by the husband), was not property to be accounted for, as part of their portion, by the children to whom the husband and wife, or the survivor of them, afterwards appointed it.

That the value of a leasehold house, assigned by the husband in his lifetime, to one of the children of the marriage, for his more comfortable maintenance and support, did not affect the share of such child of the trust fund.

That an advance by the husband in his lifetime to one of his daughters, of a sum of money, for the purpose of apprenticing her son,—the share of such daughter of the trust fund having been settled upon herself and her husband, with remainder to her children,—did not affect the share of such daughter of the trust fund. *Douglas v. Willes*, 7 Hare, 318.

Case cited in the judgment: *Folkes v. Western*, 9 Ves. 456.



3. *Limitation over to husband and not to next of kin.*—A man and his wife concurred in assigning for value to a purchaser a reversionary fund in Court, which had been bequeathed to the wife. The fund subsequently became payable in the lifetime of the husband, and the Court directed the Master to approve of a proper settlement out of the fund. The Master, after inquiries in the presence of the wife and the purchaser, reported that two-third parts of the fund was the proper sum to be settled; and he approved of a settlement. Upon the petition of the wife, and the cross petition of the purchaser, presented upon the Master's report, *held*, that two-third parts was a proper sum to be settled, and that the trusts of the settlement should be to pay the income to the wife for life, for her separate use, without anticipation, and after her decease, upon trust, as to the corpus, for the children or remoter issue, as the wife should appoint; and, in default of any appointment, upon trust for sons at 21, and daughters at 21 or marriage, if more than one equally; in default of children who should attain a vested interest, then, if the wife should survive her husband, upon trust for her; but if her husband should survive her, then in trust as she should by will appoint, and in default, in trust for her next of kin as if she had died unmarried. But *held*, on appeal, that, in the absence of special circumstances in favour of the next of kin of the wife, the last of the above limitations should be in favour of the husband. *Carter v. Taggart*, 5 De G. & S. 49.

3. *Insolvent.*—A sum of 140*l.* belonged to a husband in right of his wife. He had taken the benefit of the Insolvent Act. The Court *held*, that his assignees were entitled to no part of the fund. *Foden v. Finney*, 4 Russ. 428, is considered not binding; *In re Cutler*, 14 Beav. 220.

Case cited in the judgment: *Brett v. Greenwell* 3 Y. & C., Exch., 230.

4. *Reversionary interest.*—Husband and wife made an assignment of the wife's interest in a reversionary fund, which afterwards fell into possession. It was mutually imputed and not denied, that they were both living separate and in adultery. *Held*, that the wife was entitled to a settlement out of the fund. *Greedy v. Lavender*, 13 Beav. 62.

#### TENANT IN TAIL.

1. *In possession subject to jointure.*—*Term.—Settlement.*—The estate of a *feme covert*, tenant in tail in possession, subject to a jointure term, is equitable during the continuance of the term, for the purpose of entitling her to a settlement, on a bill filed by her.

And the Court directed a settlement, although the bill did not expressly pray to that effect. *Wortham v. Pemberton*; *Newenham v. Pemberton*, 1 De G. & S. 644.

Cases cited in the judgment: *Sturgis v. Champneys*, 5 My. and Cr. 97; *Lady Elibank v. Montolieu*, 5 Ves. 757.

#### TRUST.

1 *Rectified by declaration of Court.*—*Omission of recital of settlement in deed.*—A sum of money was charged upon an estate as portions for younger children, according to the appointment of the parents, to take effect after their deaths; and the parents, in contemplation of the marriage of their daughter, and of a settlement which her intended husband proposed to make, apportioned 5,000*l.*, part of the sum so charged, to the daughter, in case the marriage should take effect.

By a settlement of the same date, a jointure was secured to the daughter by the husband. The marriage took place, and some years afterwards, the father being then dead, an arrangement was made for the sale of the estate, and for the investment in the funds of the sum necessary to provide for the portions. The money was accordingly raised, and invested in the names, among others, of the daughter and her husband, and a declaration executed, in which the trusts of the stock purchased with the 5,000*l.* was declared to be (subject to the life-interest of the mother) for the daughter absolutely. After the death of the father and mother and the husband, the Court, at the suit of the representative of the husband, rectified the declaration of trust by declaring the 5,000*l.* to be the property of the husband, inasmuch as it did not appear that the husband intended to part with his interest in the fund, or do more than approve of the change of security; the declaration of trust omitting any recital of the settlement on the marriage, and it appearing from the letters which had passed between the solicitors of the parties, when the declaration was made, that neither of such solicitors was aware of such settlement, or of its effect as to the portion of the daughter. *Ashhurst v. Mill*, 7 Hare, 502; *Mill v. Ashhurst*, *ib.* 502.

Cases cited in the judgment: *Stockley v. Stockley*, 1 Ves. & B. 30; *Harvey v. Cooke*, 4 Russ. 34.

2. *Liability to account for establishment.*—To put an end to litigation between husband and wife, the husband conveyed property to trustees, upon trust to pay his wife 3,700*l.* a year, or so much as she should "order or require." The wife was, out of that sum, to keep up an establishment for herself and children, upon such a scale as she should think fit; and the husband was to have the benefit of it, under certain restrictions. But if she should not require the whole for the purposes aforesaid, the surplus was to be paid to the husband. *Held*, that as long as she kept up the establishment, she was not liable to account for the surplus in her hands.

*Held*, also, that this was like the case of guardians of infants, and committees of lunatics, having allowances made to them for maintenance, and who are not accountable for their expenditure, so long as they properly maintain those committed to their care. *Jodrell v. Jodrell*, 14 Beav. 397.

Case cited in the judgment: *Browne v. Paul*, 1 Sim. N. S. 92.

# The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

SATURDAY, OCTOBER 16, 1852.

## JURISDICTION IN BANKRUPTCY.

### THE LORD CHANCELLOR'S CIRCULAR.

A PROPOS of the remarks which appeared in the last Number (p. 449), in reference to the contemplated transfer of jurisdiction from the Bankrupt Commissioners to the County Court Judges, the subjoined Circular has been addressed, by the Lord Chancellor, to the Bankrupt Commissioners. From a perusal of this circular we infer, not only that Lord St. Leonards had reason to believe that certain of the Bankrupt Commissioners reside at an inconvenient distance from their Courts, but also that the eminently practical mind of the Chancellor arrived at the conclusion that the Court of Bankruptcy, as at present constituted, may be adapted to the wants of the commercial community, without resorting to the very questionable experiment of transferring the administration of the Bankrupt Laws to the Judges of the Small Debts' Courts.

The functions of a Bankrupt Commissioner are, to a considerable extent, administrative, and, as already observed, it is indispensable to the efficient and satisfactory working of the system, that the Commissioners should be constantly at hand, and readily accessible. It does happen, however, amongst judicial officers, as well as in other relations, that we frequently find those who have the least to do, are careless and unpunctual in the performance of the little required from them; and it is much to be regretted, if any one of the Bankrupt Commissioners has so underrated the importance of his public duties, as to permit domestic arrangements, or private engagements, to interfere with his regular attendance in Court.

The second branch of the Lord Chancellor's Circular refers to the authority given by the 11th section of the Bankrupt Law Consolidation Act, to direct any Commissioner acting for any district, in town or country, to hold sittings at such places within his district as the Lord Chancellor may think fit.

As before intimated, it is felt to be an inconvenience amounting to a grievance, that the proceedings under a bankruptcy are carried on at a considerable distance from the immediate locality in which the bankrupt has conducted business, and where the majority of his creditors reside. For example, if a trader becomes bankrupt at Southampton, at Brighton, or at Norwich, the proof of debts, the examination of the bankrupt, the hearing and adjudication upon the application for a certificate, are all taken in the ordinary course at Basinghall Street, as all the places named are within the Metropolitan District. Instances may be readily adduced from the country districts, in which towns of equal or greater magnitude are situate at a similar distance from the place in which the Commissioner holds his sittings. It is quite true that the proof of debts may, and in country cases constantly is, taken by affidavit, but even this involves an unnecessary degree of trouble and expense, and if any question is raised as to the validity of a debt or the amount claimed, the creditor is required personally to attend before the Commissioner. So, if the creditor's evidence is necessary upon any matter touching the conduct or transactions of the bankrupt, the personal appearance of such creditor before the Commissioner is indispensable. Now, it must be remembered that a bankruptcy is a shipwreck, in nearly every case, attended with disappointment and loss to the creditors, and it is very frequently unprofitable, and therefore imprudent, for an individual cre-

ditor to incur expense in asserting his own rights, and still less in prosecuting inquiries which, if successful, could only be beneficial to him in common with the body of creditors or the general public. In bankruptcy, therefore, it is especially desirable that justice should be brought home as closely as may be to every man's door, which certainly is not the result of existing arrangements. It has happened occasionally, upon the failure of bankers or others, having a multitude of small creditors, that an officer of the Court of Bankruptcy, usually the Registrar or Official Assignee, has been sent down to the locality in which the bankrupt carried on business to receive the proofs of undisputed debts, but this, though it affords some relief in the particular case, is manifestly an inadequate and a partial remedy. What is required is, that the creditor should be able in every case, without any considerable pecuniary expense or loss of time, to attend the sittings of the Court when his debtor's case is under consideration; and again, when a bankrupt feels that any of his transactions require explanation, that he should be able, without much expense, to bring witnesses to depose to any facts necessary for their elucidation. Lord St. Leonards calls upon the Bankrupt Commissioners to assist him, in pointing out the occasions on which they deem it expedient that he should exercise the authority with which he is invested under the 11th section of the Act, and there is no reason to presume that this appeal will not be cordially and disinterestedly responded to. It has been suggested, however, by some gentlemen in the City, who have given great attention to the subject, and from the extent of their dealings are deeply interested in the management of bankrupts' estates, that the best and most obvious remedy for the evil complained of, is to direct one of the Commissioners to hold a Court monthly in the chief towns within his district. Thus, in the instances adverted to, a Court may be held on the first Monday of every month at Norwich, on the second Monday at Brighton, on the third Monday at Southampton, and so in the country districts, in order that Bankruptcy proceedings should be conducted on the spot in every town which contains a certain number of inhabitants. If it was ascertained beforehand, as it generally might be, that there was no business to require the Commissioners attendance, it might be dispensed with, and the Court adjourned for another month. This arrangement would be at-

tended with inconsiderable expense, it would require no additional authority from Parliament, and no increase of judicial strength. In the Metropolitan district, as already stated, there are no less than five Commissioners, and in all the country districts (except Exeter and Newcastle-upon-Tyne) there are two Commissioners. Even in the districts in which there is only a single Commissioner, however, no inconvenience would arise from the establishment of a Circuit Court in the large towns within the district, as the Consolidation Act expressly provides that any Registrar of the Court may, during the absence of any Commissioner, act as the deputy of such Commissioner, and, so acting, shall have all power vested in the Court, except the power of commitment, the hearing of any disputed adjudication, or the hearing or determining any question of the allowance or suspension of a bankrupt's certificate (see 12 & 13 Vict. c. 106, s. 27). The Registrars of the Court of Bankruptcy are, we believe, without exception, members of the Legal Profession,—they are sufficiently paid,—they are in many instances as competent to discharge the duties of the Commissioners as the Commissioners themselves, and it is to be hoped that, under the new arrangements contemplated by the Lord Chancellor, their offices will be rendered efficient, and their services become advantageous to the public.

It was correctly stated in a pamphlet, not long since published, by one of the Bankrupt Commissioners,<sup>1</sup> that the Code of Bankruptcy Procedure already embraces nearly all the improvements which the most sanguine reformers desired to introduce in the Courts of Law or Equity. In the Courts of Bankruptcy we already find the fusion of Law and Equity now so ardently advocated, the investigation and decision of facts is not encumbered by formal pleadings, and, whenever it is desirable, all parties may be examined *vis à voce* in the presence of the Commissioner, whose decision, if erroneous, may speedily be corrected upon appeal to the Lords Justices.

It is equally matter of surprise and regret that a system in many respects so admirable, should nevertheless have failed in so great a degree to satisfy the just expectations of the Legislature and the public. If Lord St. Leonards can success-

<sup>1</sup> "Suggestions offered to those interested in the Reform of the Law." By Mr. Commissioner Ayrton.

fully grapple with the difficulty by placing the administration of the Bankrupt Laws upon an improved footing, he will confer a substantial benefit on the commercial community, and acquire an additional title to the character of a great practical law reformer.

It may not be without interest to our professional readers to add, that the *Rules and Orders*, directed by the 8th section of the Act 12 & 13 Vict. c. 106, to be made by the Commissioners and approved by the Lord Chancellor, for the better carrying the Act into execution, have at length, been framed, that they have lately been submitted to the Commissioners for final revision, and are expected to be authoritatively promulgated in the course of the approaching Term.

The following is the Circular which has appeared in *The Times* and other newspapers, as having been addressed to the Bankruptcy Commissioners:—

"The Lord Chancellor wishes to direct the attention of the Commissioners of the Court of Bankruptcy to the provision in the 10th section of the Bankrupt Law Consolidation Act, which requires the Court to sit daily for the despatch of business. This involves the necessity, on the part of every Commissioner, of residence within a convenient distance of the Court; and the Lord Chancellor trusts that every Commissioner will comply with this condition.

"The Lord Chancellor also wishes to draw the attention of the Commissioners to the power given by the 11th section to the Lord Chancellor, whenever it shall appear to him to be expedient, to order any Commissioner to hold sittings at such places within the district as the Lord Chancellor may think fit. This is a power which cannot be exercised without the aid of the Commissioners themselves; the Lord Chancellor desires, therefore, that whenever a Commissioner is of opinion that unnecessary delay, expense, or inconvenience will be sustained by creditors, unless sittings are held at some other than the usual place within the district, such Commissioner will apply to the Lord Chancellor for power to hold such sittings; and as it is inexpedient that any such sittings should be held without sufficient cause, the Lord Chancellor directs that every such application shall state the grounds upon which it is made.

"Sept. 25.

"ST. LEONARDS, C."

The Law of Debtor and Creditor appears likely to occupy a large share of Public and Professional attention in the ensuing Session.

## ANNOTATIONS ON THE COMMON LAW PROCEDURE ACT, No. IV.

### NON-APPEARANCE. — APPEARANCE AND JOINDER OF PARTIES AND CAUSES OF ACTION.

THE 15 & 16 Vict. c. 76, repeals so much of the Act 12 Geo. 1, and 2 Wm. 4, c. 39, as relates to entering an appearance for a defendant by a plaintiff, and provides, that in case of non-appearance, upon filing an affidavit of the personal service of the writ of summons, or a Judge's order for leave to proceed, together with a copy of the writ, the plaintiff shall be at liberty to file a declaration, indorsed with notice to plead in eight days, and to sign judgment by default at the expiration of the time so specified. If the action is brought in respect of any debt or liquidated demand the particulars of which might have been specially indorsed on the writ, as already mentioned, and the plaintiff omits to make such indorsement, it is expressly provided by sect. 28, that he is "not to be entitled to more costs than if he had made such special indorsement and signed judgment upon non-appearance." The neglect to indorse particulars on the writ, therefore, where such a course of proceeding is applicable, imposes on the plaintiff the delay and expense of filing a declaration, for which he is to receive no costs, when the defendant fails to appear.

The defendant may appear at any time before judgment is actually signed, and after notice of such appearance to the plaintiff or his attorney, he is to be in the same position, as to pleadings and other proceedings, as if he had appeared in time, but a defendant appearing after the appointed time is not to be entitled to any further time for pleading or any other proceedings than if he had appeared in due course.

The *entry of appearance* prescribed by the Act is similar to that which has heretofore been usual when a defendant appears in person or by an attorney. If the defendant appears *in person*, however, he is now imperatively required to *give an address*, at which pleadings and other proceedings not requiring personal service, are to be left. The Act provides, that if the address so given be illusory or fictitious, the appearance shall be irregular, and may be set aside by the Court or a Judge, and the plaintiff be permitted to proceed by sticking up the proceedings in the Masters' Office (sect. 30, *ante*, p. 393). It is to be feared that the effect of this provision will be to

encourage a defendant who has no intention to defend an action, to appear and give a fictitious address, by which time may be gained and the judgment to which the plaintiff is entitled delayed.

Where an action is brought against two or more persons, and the particulars are endorsed on the writ, as before described, if one or more of the defendants only appear, and another or other defendants do not appear, the plaintiff is to be at liberty, before declaration, to sign judgment and issue execution against the defendants who have not appeared, abandoning the action against those defendants who have appeared; or the plaintiff, at his option, may, before execution, declare against the defendants who have appeared, and suggest the judgment obtained against the defendants who have not appeared, which judgment is to operate as a judgment by default obtained before the passing of the Act.

At any time before trial, the Court or a Judge may order any person not joined as plaintiff to be added, or any person originally joined as plaintiff to be struck out, if it appear that such amendment may be made without injustice, and that the person to be added consents personally or by writing, or that the name of the person to be struck out was originally introduced without his consent, or that he consent to be struck out. The amendment is to be made upon such terms and conditions as the Judge shall think fit, subject to which the liability of the person added is to be co-extensive with that of the plaintiffs originally joined. So, if it appear at the trial that there has been a misjoinder of plaintiffs, or that some person who ought to have been joined has been omitted, and the defendant has not before the time of pleading given notice that he objects to such non-joinder, the non-joinder or mis-joinder may be amended as a variance,—in like manner as variances are amended under the 3 & 4 Wm. 4, c. 42, provided it appears that such mis-joinder or non-joinder was not for the purpose of obtaining an undue advantage, that injustice will not be done by the amendment, and that the parties to be added or struck out consent to the amendment. The liability of persons so added at the trial is to be the same as if such persons had been originally joined. When the defendant gives notice, before plea, that he objects to, or pleads in abatement, the non-joinder of a plaintiff, the plaintiff is to be at liberty, without any order, to amend by adding the name of the

person described in such notice or plea in abatement, and to proceed in the action without further appearance, on payment of the costs occasioned by such amendment, but in that case the original defendant is to be at liberty to plead *de novo*.

Where too many defendants are joined in an action on contract, the Court or a Judge before trial may order the name of one or more to be struck out; and in case it appears at the trial of such action that there has been a misjoinder of defendants, it may be amended in like manner as the misjoinder of plaintiffs, upon such terms as the Judge may direct.

In actions on contract, where the non-joinder of a defendant is pleaded in abatement, the plaintiff, without any order, may amend the writ of summons and declaration by adding the name of the party specified in the plea as a joint-contractor, and after serving the person added with the writ, may proceed with the action; but as regards the added defendant, the date of the amendment is to be considered for all purposes as the commencement of the action. If it afterwards appear, upon the trial, that the party named in the plea in abatement was jointly liable with the original defendant, the latter is to be entitled to the costs of the plea in abatement and amendment; but if it appear that the original defendant is liable, and the person named in the plea in abatement is not liable, the plaintiff will be entitled to judgment against the defendant who is found liable, and the defendant who is not liable is to have judgment for his costs against the plaintiff, who is to be reimbursed for such costs by the original defendant who pleaded the non-joinder in abatement. It is expressly provided, however, (sect. 39, p. 394, *ante*,) that the defendant who has pleaded in abatement, shall be at liberty on the trial, "to adduce evidence of the liability of the defendant named by him in the plea." Under this novel provision, it will be competent either for plaintiff or defendant upon a trial to establish the liability of a co-defendant in respect of whom there has been a plea in abatement.

In actions by man and wife, for an injury to the wife, and in which she is necessarily joined as plaintiff, the husband is now empowered to add claims in his own right; and if he improperly neglects so to do, and that separate actions founded on the same injury are brought, they may be consolidated by order of the Court, but in case of the death of either plaintiff, the

suit, as regards so much of the cause of action as does not survive, is to abate. As to the *joinder of causes of actions* generally, it is enacted, that causes of action of whatever kind may be joined in the same suit, "provided they be by and against the same parties and in the same rights;" but this is not to extend to replevin or ejectment; and the enactment is further qualified by a provision, giving the Court or a Judge power to prevent the trial of different causes of action together, and to direct separate records to be made up and separate trials to be had, when it is expedient. It may be supposed that if an action was brought for the recovery of a tailor's bill, joined with a count for the seduction of the tailor's servant, that the Judge would deem it inexpedient that causes of action so dissimilar should be the subject of one investigation, but even in that case the Judge would not necessarily be aware of the nature of the issues to be tried until the jury was sworn and the pleadings opened! The permission to unite various causes of action in the same suit manifestly requires the exercise of judgment and discretion on the part of the practitioner, as the licence it affords may open the door to an abuse more considerable than the mischief it is intended to remedy. A further change is made by this section (s. 41) in the law and practice as to the joinder of causes of action, by providing, that where two or more causes of action so joined are in their nature *local, and arise in different counties*, the venue may be laid in *either* of such counties, an enactment wholly unobjectionable, assuming that the Court or a Judge, as at present, may direct the venue to be changed on special grounds.

The Act contains a series of sections (from sect. 42 to sect. 48), regulating the proceedings for the determination of questions raised by consent without pleading (see pages 394 and 395), and then follow enactments relating to pleading, which will be more conveniently treated of in a future Number.

### MUTUAL LAW ASSOCIATION.

It appears that a meeting was held at "Odd Fellows' Hall," (a very appropriate room,) in Birmingham, on the 30th July last, consisting of ladies as well as gentlemen, when Mr. Charles Rann Kennedy, the Barrister, delivered a long address. The object of the meeting was to explain the objects of a Society called "*The Mutual Law Association*." Mr. C. R. Kennedy

has published his address, and we proceed to state some of its principal points. The character and plan of the Society are thus described in the speech:—

"This is a purely voluntary Association, imposing no liability, putting no man under any restriction, but offering certain advantages to those who become members. You may enter it when you please, and leave it when you please. The small subscriptions will go to defray the expenses of printing, publishing, meeting, &c. We propose to give you such legal assistance as you may require, in Birmingham only. The Counsel will not interfere with the attorney's department, nor the attorney with the counsel's. You are at liberty to consult counsel or attorney, or both, as you please; to have their assistance either separate or combined. There is no difficulty and no mystery about the affair. The scale of charges is open to the inspection of members. They will afford you all such information, as from the nature of the case can be expected; they will explain our general plan and system. For the proper working out of this, you must of course rely upon the honour and probity of the parties concerned. Any complaints may be preferred to the directors at the quarterly meetings; but I have no fear that there will ever arise a necessity for so doing.

"The system that we have devised is such, that a man may generally know beforehand what he has to pay—at least, within a reasonable compass."

It is stated in a note to this paragraph, that "the professional gentlemen connected with the Society do not undertake criminal business or the conduct of causes in the the Superior Courts." Our readers are aware that various cheap Law Societies have been formed or attempted in several parts of the country, for the purpose of supplying the suitors of the County Courts and other persons with advice and assistance to be paid to some legal functionary out of the fund derived from the subscriptions received. Such associations are clearly illegal if the expense of proceedings in Courts of Justice are defrayed out of a common fund of the members. These establishments have, for the most part, been promoted by some active attorney "in search of practice." It seems that we are now to witness the experiment of "A Society of Barristers in search of Briefs." Mr. Rann Kennedy, it appears, has been at the Bar 17 years, and according to the Law List of this year, was attached to the Home Circuit. His merits do not appear to have been sufficiently appreciated on that Circuit or in the Metropolis, and he has now transferred his services to Birmingham and, we presume, the Midland Circuit. His pre-

ference of Birmingham is thus accounted for :—

"I find upon inquiry, that in the last 10 years there have been 10 barristers come to settle in Birmingham, of whom only one has succeeded—that was Serjeant Allen; and I am informed that his success was owing chiefly to a powerful body, the Licensed Victuallers' Association, who made him their standing counsel. When I arrived here, I found Mr. Claydon had taken up his residence in the town, a gentleman of some standing, and the author of a good legal work. He remained here about 15 months, and scarcely got a brief.

"I came myself at the invitation of some leading gentlemen connected with the Queen's College, where a Professorship of Law had just been established, and it was thought that legal students might be found in the town and neighbourhood, to whom college lectures would be serviceable. I devoted a considerable portion of time to the preparation of lectures, designed to take in the whole compass of English Law. My inaugural address gave universal satisfaction. It was printed at public request. But it produced little fruits—nine pupils, at two guineas a piece, made the year's profits of the Professorship. I do not complain; it might have been foreseen that lectures would never answer, unless the attendance were compulsory. The want which they undertook to supply was not felt by the parties concerned."

A large part of the Speech is occupied in vehemently denouncing the practice of attorneys appearing as advocates in the County Courts, and he thus speaks of himself and his mission :—

"I—born and educated at your school—a pupil not unknown or inglorious—I will devote myself to establish a system, for which unborn generations shall honour my name, and of which you and your children shall reap the harvest. Then rally round me! Another such you will not readily find—many, indeed, of greater talents—but none with the same courage and honest singleness of purpose. Choose between me and my opponents! Compare us only! Ask yourselves from whom the town derives the greatest honour! They have assailed me already. They have raised their puny war-cry! blown their six-and-eightpenny trumpet! and thus I answer it—by a counter-peak, which from this the centre of England shall resound through the length and breadth of the land, and make the whole fabric of their rotten system tremble and totter to its foundations."

"I seek to do for law what Cobden has done for corn—to make it cheap and reasonable. By law I don't mean litigation; the less of that the better. I mean legal advice, instruction, assistance. The County Courts have brought the administration of justice to the poor man's door; but you want more than that. You want to have within your reach a class of ho-

ourable advocates, and faithful interpreters of the law. In plain English, you want a Bar; but a Bar accessible and useful to the people.

"I trust that in a few years counsel will spread themselves over the whole kingdom, and adopt that course by which they may become a blessing to society. Whatever number may come to Birmingham, they will be welcomed by me. I have no jealousy or dread of competition. Let abler men than myself—and there are many such—establish themselves here: I will say with the Spartan of old, 'I rejoice that my fellow-townsmen are better served.'"

On the important subject of *Fees*, and the comparative smaller amount of those of the attorney, the learned gentleman thus delivers his opinion :—

"There is an idea that it is degrading to a barrister to take less than a guinea fee. False pride again! And (what is more to the purpose) sheer nonsense! and the sooner people get such rubbish out of their heads, the better! The price of every commodity adjusts itself. Leave counsel's fees to find their natural level, and find it they will. To fix anything of the kind at an artificial standard, is contrary to every maxim of political economy and common sense. A rule that counsel should never receive less than a guinea, is about as wise as a rule that no man shall sell a pound of sugar for less than 1s. 6d.

"The only persons who benefit by this assumed standard are attorneys. A man who looks charily at a guinea before he parts with it is less alarmed at the prospect of paying six-and-eightpence, and knocks at the attorney's door with a happy assurance, which is not abated until he makes certain discoveries: viz., that three sums of six-and-eightpence make a pound; and that a bill of costs for instructions, attendances, letters, perusals, &c., makes a sum total exceeding the outlay which he originally intended."

To our readers it is scarcely necessary to comment on these statements; but there are other parts of this address, bearing on the conduct of the attorneys and their relation to the Bar to which we shall take an early opportunity of advertng.

It should be recollected that the Bar have exclusive audience, not only in all the Superior Courts of Law and Equity, and at Nisi Prius and the Assizes, but at all the Quarter Sessions. It is only before the Commissioners in Bankruptcy and the Judges of the County Courts that attorneys are entitled to be heard.

The contest now, however, has changed its aspect. It is admitted that, for the sake of the public interest, the suitor should have the choice between barristers and attorneys. The main point now in-

sisted on is, that the barrister should be at liberty to take his case or brief from the suitor without the intervention of an attorney. In short, for the sake of competing with a small number of attorneys out of 10,000, it is proposed to rescind the rule of the Bar and enable its members to act as attorneys as well as barristers;—to see the suitors and their witnesses personally, and “get up the case” for trial. We believe that not one attorney in fifty is desirous of acting as an advocate, but in the Inferior Courts he ought not to be precluded, if his clients desire him to appear.

## NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

### INTESTATES' PERSONAL ESTATES.

15 VICT. c. 3.

Administration of the personal estate of intestates and others, where her Majesty is entitled, may be granted to the solicitor of the Treasury for the time being (as nominee of her Majesty) and his successors; s. 1.

Administration bond not necessary, notwithstanding provisions of 22 & 23 Car. 2, c. 10.; s. 2.

Administrations granted to the late George Maule, as nominee of her Majesty, to be continued by the Solicitor of the Treasury for the time being; s. 3.

Monies accruing under the administrations and forfeitures to be carried to a general account; s. 4.

Treasury to make rules, &c., as to payment of monies into and out of the general account, &c.; s. 5.

Monies not claimed by grantees of the Crown to be carried to the Consolidated Fund, and claims afterwards established to be paid out of the Consolidated Fund; s. 6.

Executors of George Maule to transfer trust funds to the trust accounts; upon such transfer, executors, &c., discharged from all liabilities; s. 7.

The following are the sections of the Act:—

Whereas letters of administration of the effects of several intestates and others to whose personal estates her Majesty and her predecessors became entitled in right of the Royal Prerogative were from time to time in the lifetime of George Maule, Esq., deceased, late the Solicitor for the Affairs of her Majesty's Treasury, granted to the said George Maule, as the nominee and for the use of the Sovereign, and many of such estates have not been fully administered: And whereas it is

expedient to provide for the continuance of the said administrations which have determined by the death of the said George Maule, and to make further provision concerning the like administrations hereafter to be granted to her Majesty's use: Be it enacted, therefore, as follows:—

1. So often as her Majesty, by any warrant under her Sign Manual, shall be pleased to direct the Solicitor for the time being for the Affairs of her Majesty's Treasury to apply for and obtain letters of administration of the personal estate and effects of any person dying intestate to whose personal estate and effects her Majesty may have become entitled in right of her Royal Prerogative, or letters of administration (whether general or limited) of the personal estate and effects of any other person deceased, where in respect of the interest of her Majesty in such estate and effects such administration may be rightfully granted to a nominee of her Majesty, it shall be lawful for any competent Court in England, upon application, in pursuance of such warrant, to grant administration accordingly to such solicitor for the time being and his successors in the office of Solicitor for the Affairs of her Majesty's Treasury, for the use and benefit of her Majesty; and in every such case the administration so granted, and the office of administrator under the grant, with all the estates, rights, duties, and liabilities of such administrator, shall, upon the death, resignation, or removal of the solicitor for the affairs of her Majesty's Treasury for the time being, devolve upon and become vested and continue in the succeeding solicitor by virtue of his appointment, and so in perpetual succession without any further grant of administration or any assignment or transfer of the estates of the administrator; and all actions, suits, informations, and other proceedings whatever at Law or in Equity by or against any such solicitor for the time being as such administrator at the time of his death, resignation, or removal, shall continue and may be proceeded with by, in favour of, and against the succeeding solicitor in like manner; saving always the effect of every limitation in duration or otherwise under the terms of the grant of any such administration; and saving to every Court having jurisdiction in this behalf of all such right and authority to revoke or repeal any such administration as such Court would have had during the continuance of a like administration granted to a nominee of her Majesty in case this Act had not been passed.

2. It shall not be necessary for the Solicitor for the affairs of the Treasury for the time being, or the Solicitor for the affairs of her Majesty's Duchy of Lancaster for the time being, applying for or obtaining grant of administration to the use or benefit of her Majesty, to enter into or cause to be entered into any bond to the ordinary, commonly called an administration bond (the Act of the Session of Parliament holden in the 22 & 23 Car. 2, c. 10, or any other law or usage notwithstanding); but the Solicitor for the Affairs of the Treasury



for the time being, or the Solicitor for the Affairs of her Majesty's Duchy of Lancaster for the time being, shall, in relation to every such administration, be subject to all the liabilities and duties imposed on an administrator by the condition of the bond prescribed by the said Act of the 22 & 23 Ch. 2.

3. In every case where letters of administration of any personal estate or effects of any intestate or other person deceased have been granted to the said George Maule as the nominee or for the use and benefit of any of her Majesty's predecessors, or as the nominee of her Majesty, or for the use and benefit of her Majesty, and now remain unrevoked, such letters of administration shall not be deemed to have determined by his decease, but such administration and the office of administrator under the grant, and all the estates, rights, duties, and liabilities vested in the said George Maule as such administrator at the time of his decease, or which would have been vested in the said George Maule as such administrator if living, shall, upon the passing of this Act, devolve upon and become vested and continue in the Solicitor for the Affairs of the Treasury for the time being, with the like succession and in like manner as in case of the administrations which may be granted to the Solicitor for the Affairs of the Treasury for the time being in pursuance of this Act; and all actions, suits, informations, and other proceedings at Law or in Equity had, commenced, or taken by or against the said George Maule as administrator under any such administration, and pending at the time of his decease, shall not be deemed to have abated or been discontinued by the decease of the said George Maule, but shall continue and take effect by, in favour of, and against the said Solicitor for the time being for the Affairs of her Majesty's Treasury, as the same would have continued and taken effect if such administration had been granted to the said George Maule as Solicitor for the time being of her Majesty's Treasury under the provisions of this Act.

4. It shall be lawful for the Commissioners of her Majesty's Treasury to direct the payment into a general account, under such arrangements as they shall think expedient, of all monies accruing under administrations granted to the Solicitor for the Affairs of the Treasury as nominee of her Majesty, or received by such solicitor in respect of the personal estate of any deceased person or of any forfeited property accruing to her Majesty by virtue of her Prerogative; and it shall be lawful for the said Commissioners to cause to be transferred into an account or accounts which shall be opened in the books of the Governor and Company of the Bank of England, in the names of the Assistant Paymaster-General and Solicitor of the Treasury for the time being, all stock and annuities accruing under such administrations as aforesaid, or recovered or received by such solicitor, in respect of any such personal estate or forfeited property accruing to her Majesty as aforesaid, or to cause any

monies accruing or received as aforesaid to be laid out in the purchase of stock or annuities, in the names of such Assistant Paymaster-General and Solicitor of the Treasury for the time being; and all such stock and annuities so transferred and purchased respectively shall and may be transferred or sold from time to time as the Commissioners of her Majesty's Treasury shall direct, and the monies arising from any sale thereof, and the dividends accruing in respect of such stock and annuities for the time being, shall be paid into such general account as hereinbefore mentioned; and every stock account so opened in the names of the said Assistant Paymaster-General and Solicitor of the Treasury at the Bank of England shall be a public account; and upon the death, resignation, or removal of both or either of them the said Assistant Paymaster-General and the Solicitor of the Treasury for the time being, and upon the appointment of their or his successors or successor, the stock and annuities standing in every such stock account shall vest in the then Assistant Paymaster-General and the Solicitor of the Treasury jointly, and when and so long as the office of one only of them the said Assistant Paymaster-General and the Solicitor of the Treasury shall be vacant, the said stock and annuities respectively shall vest in the other of them the said Assistant Paymaster-General or the Solicitor of the Treasury for the time being, without any transfer or act in any of the cases aforesaid.

5. It shall be lawful for the Commissioners of her Majesty's Treasury to make such rules and orders from time to time as they may think expedient as to the payment of monies into and out of the said general account, and as to the payment from time to time of such monies as may not be required for the purposes of such account into the Consolidated Fund of the United Kingdom, and as to the period after which any monies or personal estate granted by her Majesty or any of her predecessors out of property accrued to the Crown by virtue of the Royal Prerogative, and for the time being remaining unclaimed under the grants thereof, shall be carried to and form part of the Consolidated Fund.

6. Where any personal estate of any intestate or other person deceased, or any forfeited property, to which her Majesty or any of her predecessors has become entitled by virtue of the Royal Prerogative, or any such personal estate or property to which her Majesty may hereafter become entitled in like manner, or any money out of any such personal estate or property, has been granted by her Majesty or any of her predecessors, or shall hereafter be granted by her Majesty, to any person, and such personal estate, property, or money shall not have been claimed by the person entitled under the grant within such period as the Commissioners of her Majesty's Treasury may from time to time, by their rules or orders in this behalf, direct, it shall be lawful for the said Commissioners to cause such personal estate or property, or the

money arising from the conversion thereof, or the money so granted and remaining unclaimed, to be paid into and form part of the Consolidated Fund of the United Kingdom; and in case at any time thereafter any person shall show, to the satisfaction of the said Commissioners, his right or title under such grant to such personal estate or property or money so granted, or to any part thereof, it shall be lawful for the said Commissioners to direct such sum as shall have been paid into the Consolidated Fund under this provision, or any part thereof, to which such person may have established his title as aforesaid, to be paid to such person out of the growing produce of the said Consolidated Fund.

7. It shall be lawful for the Commissioners of her Majesty's Treasury, by warrant under their hands, to authorise and direct the executors of the said George Maule to pay and transfer into the accounts to be opened as hereinbefore-mentioned all monies and stock of which the said George Maule was at the time of his decease possessed under the several administrations hereinbefore referred to, or otherwise, as the nominee of her Majesty or of any of her predecessors, and any monies since received by such executors in respect of any such stock; and upon the payment or transfer of any such monies or stock, in pursuance of such warrant, such executors, and the estate of the said George Maule, shall be absolutely discharged from all liabilities, claims, and demands, at law or in equity, whatsoever in respect of the monies or stock so paid or transferred, and in respect of the property from the conversion of which the same may have arisen; and all persons having or claiming, or who otherwise might have or claim, any right or title, claim or demand whatsoever, at law or in equity, to or upon such monies or stock, or against or upon such executors, or the estate of the said George Maule, in respect thereof, or in respect of the property from the conversion of which the same may have arisen, shall and may prosecute their rights, titles, claims, or demands in respect of such monies, stock, or property against the Solicitor for the time being of her Majesty's Treasury, in like manner as in the case of monies and stock or property received or possessed by such solicitor under an administration to her Majesty's use granted under the provisions of this Act; and it shall be lawful for the Commissioners of her Majesty's Treasury to direct, in respect of such rights, titles, claims, or demands, such payments or transfers as circumstances may require.

## COUNTY COURT BAILIFFS.

### NEGLECT OF DUTY.

MR. EDITOR,—On looking into one of your back Numbers (April 10), I observe "A Tradesman" has mentioned one of the numerous grievances to which suitors are liable in suing in the County Courts. Now, it is my

opinion, that not only the case referred to, but all of a similar nature occur from the unfitness of the men appointed as under-bailiffs to fulfil that office. For as it is their duty to serve all summonses, orders, &c., and levy all executions, I think they ought to be men of a very different character to those generally employed. But if on account of the unpleasant duties of the office more respectable individuals cannot be provided, let the high-bailiff or his deputy or deputies investigate every unsatisfactory return made by them, and so prevent the possibility of those men who, for the sake of a small pecuniary remuneration, would endorse a summons "cannot be found," or an execution "*nulla bona*" from being able to do so.

I would just draw your attention to a case that has recently come under my notice, which is equally disgraceful as it is unjust. The bailiff intrusted with the levying of an execution made a return *nulla bona*. Upon the plaintiff (a poor tradesman) assuring him such could not be the case, he replied, that "The landlord had then a distress in the house, and that after that was satisfied there would not be stick or stone for any one."

The plaintiff of course applied to the landlord to know if the statement was correct; when it turned out that it was only a fabrication of the bailiff himself to screen the defendant, and that the defendant was well able to pay, and had plenty of assets.

This, I am afraid, is not an isolated case, and it is my opinion that in many cases the ends for which the County Courts were instituted are defeated by the inadequacy of these men, or from their not being properly controlled.

AMICUS JUSTITIÆ.

## PUBLIC GENERAL ACTS.

15 & 16 VICT.

1. An act to apply the sum of 8,000,000*l.* out of the Consolidated Fund to the Service of the Year 1852.
2. An act to authorise the inclosure of certain lands, in pursuance of the Seventh Annual and also of a Special Report of the Inclosure Commissioners for England and Wales.
3. An act to provide for the Administration of Personal Estates of Intestates and others to which her Majesty may be entitled in right of her Prerogative or in right of her Duchy of Lancaster.
4. An act to indemnify such Persons in the United Kingdom as have omitted to qualify themselves for Offices and Employments, and to extend the time limited for those purposes respectively.
5. An act further to explain and amend the acts for the Regulation of Municipal Corporations in England and Wales, and in Ireland.
6. An act for extending the Term of the Provisional Registration of Inventions under "The Protection of Inventions Act, 1551."
7. An act for punishing Mutiny and Deser-

tion, and for the better Payment of the Army and their Quarters.

8. An act for the Regulation of her Majesty's Royal Marine Forces while on shore.

9. An act to disfranchise the Borough of Saint Albans.

10. An act for raising the sum of 17,742,800*l.* by Exchequer Bills, for the Service of the year 1852.

11. An act to continue an Act of the 12th year of her present Majesty, to prevent the spreading of contagious or infectious Disorders among Sheep, Cattle, and other Animals.

12. An act to enable her Majesty to carry into effect a Convention with France on the Subject of Copyright; to extend and explain the International Copyright Acts; and to explain the Acts relating to Copyright in Engravings.

13. An act to amend and continue certain Acts relating to Linen, Hempen, and other Manufactures in Ireland.

14. An act to continue an Act of the 15th year of her present Majesty, for charging the Maintenance of certain poor Persons in Unions in England and Wales upon the Common Fund.

15. An act to continue an act to amend the Laws relating to Loan Societies.

16. An act to amend the acts relating to the Repayment of Advances made to Districts in Ireland.

17. An act for further continuing certain temporary Provisions concerning Ecclesiastical Jurisdiction in England.

18. An act to continue the Exemption of Inhabitants from Liability to be rated as such in respect of Stock in Trade or other Property to the Relief of the Poor.

19. An act to continue an act for authorising the application of Highway Rates to Turnpike Roads.

20. An act to continue the Duties on Profits arising from Property, Professions, Trades, and Offices.

21. An act to continue the Stamp Duties granted by an act of the 5th and 6th years of her present Majesty, to assimilate the Stamp Duties in Great Britain and Ireland, and to make Regulations for collecting and managing the same.

22. An act to continue certain acts for regulating Turnpike Roads in Ireland.

23. An act to shorten the Time required for assembling Parliament after a Dissolution thereof.

24. An act for the amendment of an act passed in the 1st year of the reign of her Majesty Queen Victoria, intituled "An act for the Amendment of the Laws with respect to Wills."

25. An act to amend an act for registering Births, Deaths, and Marriages in England.

26. An act to enable her Majesty to carry into effect Arrangements made with Foreign Powers for the Apprehension of Seamen who desert from their Ships.

27. An act to amend the Law of Evidence in Scotland.

28. An act to amend an act of the 14th and 15th years of her present Majesty, for the Direction of Public Works and Buildings; and to vest the Buildings appropriated for the Accommodation of the Supreme Courts of Justice in Edinburgh in the Commissioners of her Majesty's Works and Public Buildings.

29. An act to empower the Commissioners of her Majesty's Works and Public Buildings to inclose and lay out Kennington Common in the County of Surrey as Pleasure Grounds for the Recreation of the Public.

30. An act to empower the Commissioners of her Majesty's Customs to acquire certain Lands and Houses in the Borough of Belfast, for the purpose of erecting a Custom House and other Offices and Buildings required for the Public Service in the said Borough.

31. An act to legalise the formation of Industrial and Provident Societies.

32. An act to alter and amend certain Provisions in the Laws relating to the Number and Election of Magistrates and Councillors in the Burghs in Scotland.

33. An act to confirm certain Provisional Orders made under an Act of the last Session, "to facilitate Arrangements for the Relief of Turnpike Trusts, and to make certain provisions respecting Exemptions from Tolls."

34. An act to extend the act to facilitate the Improvement of Landed Property in Ireland, and the acts amending the same, to the Erection of Scotch Mills for Flax in Ireland.

35. An act to amend an act passed in the last Session of Parliament, intituled "An act to regulate certain Proceedings in relation to the Election of Representative Peers for Scotland."

36. An act to amend the Law relating to the certifying and registering Places of Religious Worship of Protestant Dissenters.

37. An act to continue the Poor Law Commission for Ireland.

38. An act to explain Two Acts of the 12th and 13th years of the reign of her Majesty, concerning the Appointments of Overseers, and the Authority of Justices of the Peace to act in certain Matters relating to the Poor in Cities and Boroughs.

39. An act to remove Doubts as to the Lands and Casual Revenues of the Crown in the Colonies and Foreign Possessions of her Majesty.

40. An act for carrying into execution an Agreement for the Sale of Property belonging to her Majesty, in right of her Crown and of her Duchy of Lancaster, to the Commissioners of Inland Revenue; and for enabling such Commissioners to dispose of their present Chief Office and other Property in the City of London.

41. An act to provide a Burial Ground for the township of Huddersfield in the County of York.

42. An act to confirm certain Provisional Orders of the General Board of Health, and to amend the Public Health Act, 1848.

43. An act to repeal certain Disabilities

under the 1 Geo. 1, c. 13, and the 6 Geo. 3, c. 53.

44. An act to amend and consolidate the Laws relating to the Carriage of Passengers by Sea.

45. An act for making a Turnpike Road between Stone Creek and Sunk Island Church in the County of York, and between Sunk Island Church and Patrington Haven, and for consolidating with such Roads the present Turnpike Road from Sunk Island Church to Ottringham, and for constructing Quays and Wharfs at Stone Creek.

46. An act to amend an Act of the 11th year of King George the Fourth, for amending and consolidating the Laws relating to the Pay of the Royal Navy.

47. An act to enable her Majesty to abolish otherwise than by Treaty, on Condition of Reciprocity, Differential Duties on Foreign Ships.

48. An act for the Amendment of the Law respecting the Property of Lunatics.

49. An act to extend the Provisions of the several Acts passed for the Conveyance of Sites for Schools.

50. An act to consolidate and amend the Laws relating to the Militia in England.

51. An act to extend the Provisions of the Acts for the Commutation of Manorial Rights, and for the gradual Enfranchisement of Lands of Copyhold and Customary Tenure.

52. An act to enable Colonial and other Bishops to perform certain Episcopal Functions, under Commission from Bishops of England and Ireland.

53. An act to provide for the exercise of certain Powers vested in the Bishop of Quebec in respect of Districts severed from his Diocese.

54. An act further to facilitate and arrange Proceedings in the County Courts.

55. An act to extend the Provisions of "The Trustees Act, 1850."

56. An act for regulating the Qualifications of Pharmaceutical Chemists.

57. An act to provide for more effectual Inquiry into the Existence of corrupt Practices at Elections for Members to serve in Parliament.

58. An act to continue certain Turnpike Acts in Great Britain.

59. An act to continue the Poor Law Board.

60. An act to continue an Act of the 12th year of her present Majesty, for amending the Laws relating to Savings Banks in Ireland.

61. An act to amend the Laws relating to Summary Proceedings for Penalties and Forfeitures under the Acts relating to the Excise.

62. An act to alter and amend certain Acts relating to the Woods, Forests, and Land Revenues of the Crown.

63. An act to amend the Laws relating to the Valuation of rateable Property in Ireland.

64. An act to continue and amend the Metropolitan Sewers Act.

65. An act to continue and amend an Act passed in the 14th year of the reign of her present Majesty, to consolidate and amend the Laws relating to Friendly Societies.

66. An act to continue an Act of the 11th

year of her present Majesty, for the better prevention of Crime and Outrage in certain Parts of Ireland.

67. An act to continue the Powers of applying for a Sale of Lands under the Act for facilitating the Sale and Transfer of Incumbered Estates in Ireland.

68. An act for the Application of certain Money accrued from Fines and Forfeitures in Ireland in aid of certain distressed Unions, and Electoral Divisions in that Country.

69. An act to confirm certain Provisional Orders of the General Board of Health.

70. An act for authorising the Occupation of the House of Correction recently erected by and for the City of London at Holloway in the County of Middlesex.

71. An act to amend an Act of the 9th and 10th years of her present Majesty for the Embankment of a Portion of the River Thames.

72. An act to grant a Representative Constitution to the Colony of New Zealand.

73. An act to make Provision for a permanent Establishment of Officers to perform the Duties at Nisi Prius, in the Superior Courts of Common Law, and for the Payment of such Officers and of the Judges Clerks by Salaries, and to abolish certain Offices in those Courts.

74. An act to defray the Charge of the Pay, Clothing, and contingent and other Expenses of the Disembodied Militia in Great Britain and Ireland; to grant Allowances in certain Cases to Subaltern Officers, Adjutants, Paymasters, Quartermasters, Surgeons, Assistant-Surgeons, Surgeons' Mates, and Serjeant-Majors of the Militia; and to authorise the Employment of Non-commissioned Officers.

75. An act to suspend the making of Lists and the Ballots and Enrolments for the Militia of the United Kingdom.

76. An act to amend the Process, Practice, and Mode of Pleading in the Superior Courts of Common Law at Westminster, and in the Superior Courts of the Counties Palatine of Lancaster and Durham.

77. An act to abolish the Office of Lord Chancellor's Secretary of Bankrupts, and to regulate the Office of Chief Registrar of the Court of Bankruptcy.

78. An act to enable the Commissioners of her Majesty's Works and Public Buildings to complete Improvements in Piccadilly and in the Neighbourhood of Buckingham Palace.

79. An act to amend and further extend the Acts for the Inclosure, Exchange, and Improvement of Land.

80. An act to abolish the Office of Master in Ordinary of the High Court of Chancery, and to make Provision for the more speedy and efficient Despatch of Business in the said Court.

81. An act to consolidate and amend the Statutes relating to the Assessment and Collection of County Rates in England and Wales.

82. An act to apply a Sum out of the Consolidated Fund, and certain other Sums, to the Service of the year 1852, and to appropriate the Supplies granted in this Session of Parliament.

83. An act for amending the Law for granting Patents for Inventions.

84. An act to make better Provision respecting the Supply of Water to the Metropolis.

85. An act to amend the Laws concerning the Burial of the Dead in the Metropolis.

86. An act to amend the Practice and Course of Proceeding in the High Court of Chancery.

87. An act for the Relief of the Suitors of the High Court of Chancery.

88. An act to remove Doubts as to the Constitution of the Bishopric of Christchurch in New Zealand, and to enable her Majesty to constitute such Bishopric and to subdivide the Diocese of New Zealand.

## ATTORNEYS TO BE ADMITTED.

*Michaelmas Term, 1852.*

*Queen's Bench.*

[Concluded from page 468, ante.]

*Clerks' Names and Residences.*

*To whom Articled, Assigned, &c.*

|                                                                                 |                                                              |
|---------------------------------------------------------------------------------|--------------------------------------------------------------|
| Hampson, Francis, Plaistow; Rusholme, near Manchester                           | J. Hampson, Manchester                                       |
| Hearn Henry, 15, Compton-st., East, Brunswick-sq.; Buckingham                   | Hearn and Nelson, Buckingham                                 |
| Hemp, Jas., 4, Grosvenor-villas; Loughborough; Park-road, Brixton               | J. Clark, Sessions-house, Old Bailey                         |
| Hockley, Edw., 20, Royal Avenue-ter., King's-rd.                                | F. Herbert, Royal Avenue-terr., King's-rd., Chelsea          |
| Holmes, Geo. Penfold, 15, Gt. James-st., Bedford-row                            | E. C. Holmes, Bedford-row                                    |
| Howell, Nathl., 8, Fisher-st., Kennington; Portsea                              | A. Low, Portsea                                              |
| Huggins, Wm., 12, Wharton-street, Pentonville; Falcon-square; Exeter            | F. Every, Exeter; W. H. Murch, Mansion-house-place           |
| Huxley, Frederick, 26, Camden-street, North, Camden-town; Liverpool             | J. B. Lloyd, Liverpool                                       |
| Hyde, Jas. Trevelyan, 1, Highgate-rise, Kentish-town                            | C. Hyde, Ely-place                                           |
| James, Thomas, 15, Manor-pl.; Huntingdon                                        | W. Fowler, Huntingdon                                        |
| Jennings, Edward Billett, 28, Grove-pl., Brompton; Leeds                        | T. T. Dibb, Leeds                                            |
| Jones, William, Wrexham                                                         | E. Wyatt, Wrexham                                            |
| Kelsall, Frederick Henry, 14, Upper Porchester-street, Paddington               | J. Robinson, Liverpool                                       |
| Kent, Benjamin, Newcastle                                                       | N. Kent, Newcastle-upon-Tyne                                 |
| Kent, Edmund, jun., 6, Albion-terrace, Sydenham-park                            | E. Kent, sen., Fakenham                                      |
| Kent, Thomas Russel, 1, Bath-place, Kensington                                  | B. Blundell, Mitre-ct. Temple; P. Nelson, Essex-st., Strand  |
| Kingsford, Montague, 11, New Ormond-street; Gower-street; Canterbury            | H. Kingsford, Canterbury                                     |
| Landor, Rt., 10, Lower Calthorpe-st., Gray's-inn-rd.                            | W. Landor, Rugeley                                           |
| Laxton, Thomas, jun., 68, Virginia-terrace; East-road, City-road; Stamford      | J. Atter, Stamford, Lincolnshire                             |
| Lett, Edward, 1, Stockwell-crescent, Stockwell                                  | R. G. Burfoot, King's-bench-walk; E. Thompson, Salter's-hall |
| Letts, John, jun., 8, Bartlett's-bldgs., Holborn                                | J. Letts, Bartlett's-buildings                               |
| Lucas, Thos. Edw., 9, Taunton-pl., Regent's-park                                | J. Ingram, Lincoln's-inn-fields                              |
| McGee, Frs. William, 21, New Millman-street; Everton, near Liverpool            | W. Foster, Liverpool                                         |
| Maclure, Bowman, Harley-st., Cavendish-square; Clifford's-inn                   | T. A. Jones, Clifford's-inn                                  |
| Mander, Chs. John, 38, Ladbroke-sq.; Little Ealing                              | J. J. Millard, Cordwainers'-hall, City                       |
| Marshall, John Stewart, 12, Amptill-sq.; Wigan                                  | R. Leigh, Wigan                                              |
| Matthews, James B. D. G., Twickenham                                            | D. Cornthwaite, Old Jewry-chambers                           |
| Mawson, William Willmott, Manchester                                            | T. Taylor, Manchester                                        |
| Meredith, Edw. Wm., 15, Charles-st., Paddington                                 | C. Meredith, Lincoln's-inn                                   |
| Metcalf, Robt., Little Shelford, Cambridgeshire                                 | O. Hyde, Cambridge                                           |
| Meyler, Thomas, Ashmeade-house, Gloucester; Amwell-street; Lloyd-sq.            | R. Wilton, Gloucester                                        |
| Miller, Mark Beau, 18, Chaloot-villas, Haverstock-hill                          | M. B. Miller, Clifford's-inn                                 |
| Minor, Wm., Store-st., Bedford-sq.; Cumberland-place, Cumberwell                | J. Lane, Chancery-lane                                       |
| Morres, Thomas Furly, Compton-street, East; Wells-st.; Sidmouth-st.             | J. R. Wheeler, Wokingham; J. S. Gregory, Bedford-row         |
| Mossman, Geo. R., jun., Bradford, Yorkshire                                     | G. R. Mossman, Bradford                                      |
| Neale, Charles Lancaster, 2, Millbrook-place, Harrington-square; Rutland-street | W. Clarke; R. E. Clarke, Thetford                            |

*Clerks' Names and Residences.*

*To whom Articled, Assigned, &c.*

|                                                                                          |                                                                             |
|------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|
| Neeson, John, 3, Claremont-pl., Dalston; Doncaster                                       | F. Fisher; F. W. Fisher, Doncaster                                          |
| Newman, Charles, 127, Albany-st.; Hemmingfield                                           | J. Birks, Hemmingfield                                                      |
| Newman, Mitchell William, 42, Downshire Hill, Hampstead; Cheltenham                      | R. J. Ticehurst, Cheltenham; J. Croft, Basinghall-street                    |
| Norris, Robert, jun., 7, Denmark-street, Islington; Liverpool                            | R. Norris, sen., Liverpool                                                  |
| Overton, Edw. Fras., 15, Green-terr., Clerkenwell                                        | G. Overton, Merthyr Tydvil                                                  |
| Owen, Meilir, Bangor                                                                     | W. Owen, Bangor                                                             |
| Owston, Hiram Abiff, 15, Compton st., East; Leicester                                    | G. Toller, Leicester                                                        |
| Parker, Arnold, 79, Lower Calthorpe-street, Middlesex; Endcliffe, near Sheffield         | Thos. Jas. Parker, Sheffield                                                |
| Parker, Henry Watson, 84, Westbourne-park-villas; Arlington-street; Oakley-square        | R. Few, Henrietta-street, Covent-garden                                     |
| Parker, James, 16, Cowley-st., Westminster; King's-bench-walk                            | R. Cheere, King's-bench-walk                                                |
| Palmer, Gillies Charles, Grantham, Lincolnshire                                          | Wm. Ostler, Grantham                                                        |
| Phillips, Thomas, General Post-office; 35, Cambridge-terr., Clapham-road                 | M. B. Peacock, General Post-office; Highgate                                |
| Phillips, William Henry, 39, Frederick-street, Gray's-inn-road; Wolverhampton            | T. M. Phillips, Wolverhampton                                               |
| Ponsoby, John, Oldham                                                                    | J. H. Hulme, Manchester                                                     |
| Poole, Fenwick Thomas, 12, Kennington-green; Lambeth; Frome                              | Thomas E. Poole, Frome                                                      |
| Rammell, Harby, 1, Hereford-sq., Old Brompton                                            | J. S. Burn, Cophall-court                                                   |
| Rankin, William, 2, Sussex-place, Islington                                              | Edward George Craig, Brintree, Essex                                        |
| Reynolds, Reginald, 2, King-st., Portman-square; Clifton; Bristol                        | T. Edwards; C. E. Ward, Bristol                                             |
| Robinson, William Arthur, Bridge-st., Southwark                                          | G. Holmer, Bridge-street                                                    |
| Rodd, Rd. Robinson, 2, Gt. Percy-st., Islington                                          | Richard Rodd, East Stonehouse, Devonshire                                   |
| Rowley, James Campbell, 103, Guildford-street; Manchester                                | A. B. Rowley, Manchester                                                    |
| Rutter, George, Manchester                                                               | E. C. Milne; W. Rutter; Manchester                                          |
| Salmon, Thomas William, 18, Everett-street, Russell-square; Caistor                      | W. Worship, Great Yarmouth                                                  |
| Saukey, Herbert Tritton, 16, Great Ormond-street; Canterbury                             | R. Sankey, Canterbury; Wm. P. Beecham, Hawkehurst                           |
| Scott, Geo. Wm., 2, Gt. Dean's-yard, Westminster                                         | James Scott, Lincoln's-inn-fields                                           |
| Shepherd, Edwin Perkins, 51, Trinity-sq., Southwark; Featherstone-bldg.; Halstead, Essex | Charles Willis, Cranbrook, Kent                                             |
| Sheppard, Augustus Fred., Bellfield-house, Fulham                                        | W. Parsons, Charing-cross; J. King, North-bldgs., Finsbury-circus           |
| Sheppard, Thomas Pollett, 3, Ranelagh-grove, Pimlico; Yutton                             | A. J. Knapp, Bristol                                                        |
| Shore, Joseph Royle, 7, Alfred-place, Bedford-square; Birmingham                         | W. Palmer, Birmingham                                                       |
| Smith, Edw. Hart, 5, Lindsey-pl., Chelsea; Belgrave-st.; Spencer-st.; Exeter             | E. W. Paul, Exeter; J. A. Buckley, Gray's-inn-sq.                           |
| Smith, William, Green-terr., Clerkenwell; New Ormond-st.; and Weston-super-Mare          | Hen. Davis, Weston-super-Mare                                               |
| Snowball, George, Sunderland                                                             | G. W. Wright, Sunderland                                                    |
| Stacey, William, 14, Soley-street, Pentonville                                           | W. H. Trinder, John-street                                                  |
| Stevens, George Chubb, Chardstock, near Chard, Somerset; Guernsey                        | E. H. Roberts; J. Terrell; Exeter; A. Guppy, Honiton                        |
| Stevenson, James Richard, 8, Ampton-st., Gray's-inn-road; King's-road; Birkenhead        | C. Falcon, Liverpool                                                        |
| Stockwood, John, Cowbridge                                                               | W. Edmondes, Cowbridge                                                      |
| Stubbs, Edward Phillips, 55, Grove-pl., Brompton; Maidstone                              | F. Scudamore, Maidstone                                                     |
| Stuckey, Joseph Fry, 21, St. James's-st.; Bridport                                       | J. Templer, Bridport                                                        |
| Talbot, Frederic, Kidderminster                                                          | W. Talbot, Kidderminster                                                    |
| Tebbay, Richard, Everton, near Liverpool                                                 | John Yates, Liverpool                                                       |
| Thomas, William Thos., 42, Hall-street, City-road; Carmarthen                            | Lewis Morris, Carmarthen                                                    |
| Thornley, James Jonathan, 12, Canterbury-place, Waltham; Macclesfield                    | R. Wormald and T. Higginbotham, Macclesfield; S. Shuttleworth, South-square |
| Tindell, Wm. Fred., 7, Rockingham-row East, New Kent-road; 48, High-street, Southwark    | Michael Cooper; George Ade; High-st., Southwark                             |
| Turner, Geo., 2, Great Percy-st.; Claremont-sq.                                          | W. A. Deane, Great Torrington; F. J. Cotton, King's-arms-yard               |
| Turner, Hubert Francis, 12, The Terrace, Kilburn, Middlesex                              | W. Farnor, Brighton; G. M. Gray, Staple-inn                                 |

## Clerks' Names and Residences.

Tweed, Thos., 4, Alfred-place, Bedford-square  
 Vassall, Robert Lowe Grant, 21, Frederick-street,  
 Gray's-inn-road; Bristol  
 Venn, Francis, 1, St. James's-road, Liverpool  
 Vivian, Charles Augustus, Penculnick, nr. Truro,  
 Cornwall; Craven-street, Strand  
 Wade, John Henry, 7, King's-bench-walk, Temple  
 Walker, Joseph, Kingston-upon-Hull; Liverpool  
 Waller, Rt., 30, Westbourne-terr.; Wolverhampton  
 Warner, George Daniel, 9, Kensington-square  
 Warwick, James Bailey, 17, Upper North-place,  
 Gray's-inn-road; New Sleaford  
 Waugh, Geo., jun., Worthing, Sussex  
 Wheldon, Rt., jun., 5, Barton-st., Westminster;  
 North Shields  
 Whitefield, John Chas., 34, Penton-pl., Penton-  
 ville; Bristol  
 Wilkinson, Matthew, 16, Alfred-st., Bedford-sq.;  
 Peterborough  
 Wilson, Langford, 17, Hill-st., Knightsbridge;  
 Leicester  
 Wilton, Rt. Pleydell, 2, Henrietta-st., Brunswick-sq.  
 Wilton, Thos., Bride's-row, Bilston, County Stafford  
 Withers, James Tuck, Bristol  
 Yeatman, John Pym, 14, Berner's-st.; 48, Hunter-  
 street; 36, Elv-place; Hampstead  
 Yewdall, George, Leeds

## To whom Articled, Assigned, &amp;c.

T. Tweed, Lincoln; G. T. Tweed, Lincoln's-inn-  
 fields  
 A. Cox, Bristol; J. S. Toor, Bedford-row  
 William Shuttleworth, Liverpool  
 John Vivian, Penculnick, Cornwall  
 John Rawson, Bradford, Yorkshire  
 C. Preston, Kingston-on-Hull; T. Harvey, Liverpool  
 J. B. Denkin and W. Dent, Wolverhampton  
 E. B. Church, Southampton-buildings  
 M. P. Moore, New Sleaford, Lincolnshire  
 G. Waugh, son., Great James-st.; R. Edmunds,  
 Worthing  
 J. Wright; J. L. Barker; South Shields  
 W. Gresham, Castle-st., Holborn; W. B. Cooper,  
 Hatton-garden; G. W. Whitaker, Henthcote-st.;  
 W. Bartholomew, Gray's-inn; W. Beavan, Bristol  
 N. Wilkinson, Peterborough  
 J. E. Lawton; W. Gregory; Leicester  
 Rt. Wilton, Gloucester; P. S. Humberston, Chester  
 J. Willim, Bilston  
 H. W. Ravenscroft, Gray's-inn-sq.; W. Craven,  
 Bristol  
 J. B. Millington, Boston  
 J. Loft-house; R. Barr; Leeds

## Added to the List pursuant to Judge's Orders.

Beardsall, Thomas, Manchester  
 Bowman, Joseph, jun., 19, Mecklenburgh-square  
 Lea, Thomas Edward, Barnet; Montague-place  
 Parmeter, Robert, Stafford-row, Pimlico; Chi-  
 chester; Reepham  
 Steward, Fred. Fisher, 2, Cambridge-ter.; Barna-  
 bury-park; Great Ormond-st.; Whitehaven  
 Stopher, William, 3, Albert-villes, Commercial-  
 road, Peckham  
 Wheldon, Thos. Richard, Howard-st., North Shields  
 Horatio Barnett, Walsall  
 R. Armitstead, Whitehaven; C. H. Bower, and  
 T. H. Bower, 46, Chancery-lane  
 H. Wellington Vallance, Tokenhouse-yard  
 R. F. Dalrymple, Parliament-st.; E. W. Johnson,  
 Chichester  
 H. Perry, Whitehaven; W. Perry, Ditto; G. Hel-  
 der, Great James-st.  
 J. J. Peddell, 14, Cheapside  
 R. Wheldon, North Shields

## NOTES OF THE WEEK.

## EXCLUSIVE AUDIENCE IN INSOLVENCY CASES IN THE COUNTY COURTS.

It appears that Mr. Tyrrell, the learned Judge of the Exeter County Court, has decided that the Bar is not entitled to exclusive audience in insolvent cases—holding that the County Court did not act in those cases as a branch of the Insolvent Debtors' Court in London, but under the statute giving jurisdiction to the Courts established under the 9 & 10 Vict. c. 95.

This accords with the judgment of Mr. Serjeant Dowling, at the County Court at York, see *ante*, vol. 39, p. 338; and which judgment was approved by the then Attorney and Solicitor-General, now the Chief Justice of the Common Pleas, and the Master of the Rolls.

## NEW JUDGE OF THE MARYLEBONE COUNTY COURT.

We are informed that Mr. Amos has resigned the Judgeship of this Court, and that the appointment has been conferred on J. L. Adolphus, Esq., the eminent reporter of the Queen's Bench Cases. Mr. Adolphus was called to the Bar on the 21st June, 1822, and was one of the Examiners at the Inner Temple. This is a very satisfactory appointment.

## COMMERCIAL LAW OF ENGLAND AND SCOTLAND.

An important Meeting is about to be held in London, with a view to the assimilation and amendment of the Commercial Law of England and Scotland. Deputations are expected from the commercial bodies of both countries, and from several Law Societies. We shall have a statement on the subject to lay before our readers next week.

## RECENT DECISIONS IN THE SUPERIOR COURTS, AND SHORT NOTES OF CASES.

### Lord Chancellor.

*Naculshaw v. Brownrigg and others.* July 22, 24, 1852.

PRINCIPAL AND FACTOR. — RIGHT TO PLEDGE GOODS.—LIEN.

*Certain goods were consigned by the plaintiff in India, to the defendants at Liverpool, for sale, and they accepted bills against the goods drawn by him. The defendants informed C. & Co., their London correspondents, that they expected the goods on sale, and on their arrival they were forwarded to C. to be sold, and the defendants drew bills on C., who accepted the same. Upon the defendants becoming insolvent, and the plaintiff's bills being dishonoured, he filed a bill for an account and payment of the proceeds of the goods, charging fraud: Held, dismissing with costs, an appeal from Vice-Chancellor Lord Cranworth dismissing the bill, that the defendants were entitled, under the 5 & 6 Vict. c. 39, s. 1, to pledge the goods, as the authority to sell implied a right to pledge the goods.*

THIS was an appeal from the decision of Vice-Chancellor Lord Cranworth (reported 1 Sim. N. S. 573). It appeared that the plaintiff, who was a merchant in India, consigned in March, 1847, to the defendants at Liverpool, two boxes of pearls, for sale on his account, and he drew against the goods to the amount of 2,466*l.* on the defendants. The defendants sent the pearls to their London correspondents, Messrs. Collet & Co., who had also been informed that the pearls were expected to be received from India for sale, with instructions to sell the same, and they drew on Messrs. Collet for 2,000*l.* on the security of the pearls, which, upon falling due, was renewed by Messrs. Collet for 1,680*l.* — pearls to the amount of 320*l.* having been sold. The defendants in November became insolvent, and the bills drawn by the plaintiff were not honoured, and Messrs. Collet paid the bill for 1,680*l.* accepted by them. The pearls were sold for 1,800*l.* which Messrs. Collet applied on account of their acceptance. The plaintiff then filed this bill, seeking an account and payment of the proceeds of the pearls, charging fraud. The Vice-Chancellor having dismissed the bill with costs, this appeal was presented.

*Bethell and Lewis*, in support, cited *Lickbrow v. Mason*, 1 H. Bl. 362; *Martini v. Coles*, 1 M. & S. 140; *Evans v. Truman*, 2 B. & Ad. 886; *Blain v. Agar*, 1 Sim. 37; *Colt v. Woollaston*, 2 P. Wms. 154.

*Roll and Goldsmid* for the defendants, contra, referred to sect. 1, of the 5 & 6 Vict. c. 39, which enacts, that "any agent who shall hereafter be intrusted with the possession of goods or of the documents of title to goods, shall be deemed and taken to be owner of such goods

and documents, so far as to give validity to any contract or agreement by way of pledge, lien, or security, *bond fide* made by any person with such agent so intrusted as aforesaid, as well for any original loan, advance, or payment made upon the security of such goods and documents, as also for any further or continuing advance in respect thereof; and such contract or agreement shall be binding upon and good against the owner of such goods, and all other persons interested therein, notwithstanding the person claiming such pledge or lien may have had notice that the person with whom such contract or agreement is made, is only an agent."

The Lord Chancellor said, that the general authority which the defendants had to sell the goods must be construed to imply an authority to pledge them, unless they were expressly prohibited, so as to bring the case within the proviso of sect. 3, exempting such cases from the operation of the act; and that as there was no such prohibition, and there was no *mala fides* made out by the plaintiff, the decision of the Court below would be affirmed with costs.

### Lords Justices.

*In re Direct Exeter, Plymouth, and Devonport Railway Company, ex parte Woolmer and others.* July 26, 1852.

WINDING-UP ACT.—MANAGING COMMITTEE.

—ORDER TO WIND-UP.—COSTS.—CALL.

*An order to wind up a company had been obtained by E., a managing committee-man, and proceedings were taken before the Master, but in consequence of recent decisions, the number of contributories was reduced to the seven managing committee. Three of these petitioned to have the winding up order discharged as obtained without their concurrence, but Vice-Chancellor Parker dismissed their petition with costs. An appeal therefrom was dismissed with costs, and a motion was also refused with costs to discharge the Master's order for a call on each for one-seventh of the costs incurred, giving credit for the sums respectively contributed by each.*

THIS was an appeal from Vice-Chancellor Parker (reported 5 De G. & S., p. 117), dismissing with costs a petition to discharge an order to wind up the above company. It was also sought to discharge the order for a call made by Master Horne to meet the costs of winding-up. It appeared that, in consequence of the recent decisions, the number of contributories were reduced to the seven members of the managing committee, three of whom, Mr. Woolmer, Mr. Kingdon, and Mr. Bastard, sought to discharge the order, obtained by Lieut. Col. Ellis in June, 1849, to wind up the company, on the ground it had been obtained without their concurrence. The Master had



made a call on each for a seventh of the gross amount of the expenses, giving credit for the sums they had respectively contributed.

*Bacon and Terrell* in support of the appeal; *Sir W. Page Wood* and *Roxburgh* for the official manager; *Malins* and *Daniel* for Lieut. Col. Ellis, contra.

The *Lords Justices* said, the winding-up order was obtained, and the proceedings thereunder prosecuted, with the sanction and concurrence of the petitioners, and they could not therefore now object to the proceedings because they had gained nothing. The appeal would accordingly be dismissed with costs. And as it appeared the mode in which the Master had made the call was reasonable and proper, the motion to discharge the same would also have to be refused with costs.

### **Vice-Chancellor Parker.**

*Calder v. Calder.* June 11, 1852.

DEVISE TO TRUSTEES WITH POWER OF SALE.—CONFIRMATION OF CONTRACT OF SALE WHERE SUIT PENDING.

*A petition was refused for the confirmation of a contract of sale of certain property by trustees under a will, with power to sell, and lease, and to give receipts, where a suit had been instituted for the administration of the testator's estate, and a reference was directed as to whether it was fit and proper to sell, and whether the contract was beneficial for the interests of the cestui que trusts, some of whom were infants.*

THIS was a petition, on behalf of the trustees of lands devised by the testator in this cause in trust for his children, with powers of sale and of leasing and to give receipts, praying the confirmation of a contract they had entered into for the sale of a portion thereof. The Master had reported, on a reference in the administration suit that there were no debts outstanding. It appeared some of the children were infants.

*Shapter* in support; *Waller*, for an infant, consented.

The *Vice-Chancellor* refused the petition, and directed a reference as to whether it was fit and proper to sell any portion of the estate, and also whether the proposed contract was beneficial for the interests of the infants.

### **Court of Queen's Bench.**

*Bostock v. North Staffordshire Railway Company.* June 11, 12, 1852.

TRIAL, COSTS OF FIRST, WHERE JURY DISCHARGED WITH DEFENDANT'S CONSENT.

*Held, making absolute a rule for the reviewal of the taxation of costs, that a plaintiff who has obtained a verdict on the second trial of an action, is not entitled to the costs of the first trial, where the jury have been discharged, although they were discharged with the defendants' consent.*

*Welsby* showed cause against the rule which

had been obtained in this case for the reviewal by the Master of his taxation of the costs. It appeared that upon the first trial the jury had been discharged by the consent of counsel upon their being unable to agree to a verdict, and that upon the second trial the plaintiff obtained a verdict. The Master having allowed the plaintiff his costs of the first trial, this rule had been obtained.

The *Court* (without calling on *Honyman* in support) said, the fact of the defendants having consented to the jury being discharged did not render the case different from one where it was discharged by the Judge himself, and the rule was accordingly made absolute.

### **Court of Eschequer.**

*Fuller v. Earle.* June 5, 1852.

ORDER TO ATTACH SHARES ON BEHALF OF JUDGMENT CREDITORS. — JURISDICTION TO MAKE OR VARY.

*Held, that the Court has no jurisdiction to vary an order made under the 1 & 2 Vict. c. 110, s. 14, by a Judge at Chambers, to attach shares belonging to the defendant on the part of judgment creditors, and an application for that purpose by a mortgagee of such shares was therefore refused.*

CERTAIN shares in the Professional Life Assurance Company belonging to the defendant had been attached under the 1 & 2 Vict. c. 110, s. 14,<sup>1</sup> upon the application of three judgment creditors to *Martin, B.*, at Chambers, and a motion was now made on behalf of a mortgagee of such shares to discharge the order.

*Keane* in support; *Bovill* and *M. Smith* for the judgment creditors.

The *Court* said, that it had no jurisdiction in the matter, as the act only empowered a Judge to make or vary the orders.

<sup>1</sup> Which enacts, that "if any person against whom any judgment shall have been entered up in any of her Majesty's Superior Courts at Westminster shall have any Government stock, funds, or annuities, or any stock or shares of or in any public company in England (whether incorporated or not), standing in his name in his own right, or in the name of any person in trust for him, it shall be lawful for a Judge of one of the Superior Courts, on the application of any judgment creditor, to order that such stock, funds, annuities, or shares, or such of them or such part thereof respectively as he shall think fit, shall stand charged with the payment of the amount for which judgment shall have been so recovered, and interest thereon, and such order shall entitle the judgment creditor to all such remedies as he would have been entitled to if such charge had been made in his favour by the judgment debtor; provided that no proceedings shall be taken to have the benefit of such charge until after the expiration of six calendar months from the date of such order."

**Court of Bankruptcy.**

(Coram Mr. Commissioner Fonblanque.)

*In re Bull.* Sept. 29, 1852.

**BANKRUPT'S EXAMINATION. — ADJOURNMENT. — ABSENCE OF ATTORNEY RETAINED BY BANKRUPT'S SOLICITORS.**

*On an adjourned examination of a bankrupt, it was sought further to postpone the case, on the ground of the absence of the attorney, who was retained by the bankrupt's solicitors, to conduct the case in Court. The application was refused.*

This was an application for the postponement of the further examination of the bankrupt as to his accounts, &c., on the ground that Mr. Hilleary, who had been retained by Messrs. Trehern and White, the bankrupt's solicitors, to appear on his behalf, was unable to attend.

*Pulling*, for the assignees, left the matter with the Court.

The Commissioner said, he could not recognise the professional interference of any legal practitioner, not a member of the Bar, *except he were retained by the party himself as his so-*

*licitor.* The Courts at Westminster had long recognised the salutary rule that the attorney directly retained in a cause was to be deemed the responsible agent of the party until he was formally removed. If a solicitor who was properly retained by a bankrupt, chose to conduct the case on his own responsibility, without the assistance of counsel, he was entitled to do so under the 12 & 13 Vict. c. 106, s. 247, but he had no power, at a particular stage of the proceedings to hand over at his pleasure to another solicitor the conduct of the case. The bankrupt might manage his own case himself, or leave it to the solicitor already formally appointed, but he could not at pleasure substitute another solicitor who was merely employed *pro hac vice* as an advocate. The application would therefore be refused.<sup>1</sup>

A brief was afterwards handed to Mr. Bagley, and the examination was proceeded with.

<sup>1</sup> This does not decide that the bankrupt could not change his solicitor, but merely that the case could not be adjourned because the professional agent substituted by the solicitor was absent.—Ed.

**ANALYTICAL DIGEST OF CASES,**

**REPORTED IN ALL THE COURTS.**

**Courts of Equity.**

[For the previous Sections of the Digest in this Volume, see

*Privy Council: Appeals*, p. 17..

*House of Lords: Appeals*, p. 38.

*Courts of Equity:*

*Law of Attorneys and Solicitors*, p. 125.

*Contributories under the Winding-up Act*, p. 143.

*Law of Trustees*, p. 165.

*Lunacy*, p. 185.

*Law relating to Infants*, p. 186.

*Law relating to Charities*, p. 203.

*Appeals in Bankruptcy*, p. 225.

*Construction of Statutes*, pp. 104, 286, 306, 325.

*Law of Wills*, pp. 346, 367, 386, 406.

*Husband and Wife*, p. 426, 446, 466.]

**LAW OF PROPERTY AND CONVEYANCING.**

**DEEDS, CONSTRUCTION OF.**

1. In 1814, estates were limited to such uses, &c., as A. should appoint, and, in default of appointment, to him for life, remainder to his son for life, remainder to the son's first and other sons in tail male: and those limitations were followed by powers of leasing, and selling, and exchanging, the latter of which was to be exercised during the life of A. and his son, and with their consent. In 1830, A. being desirous of relinquishing his life interest, appointed the estates to his son for life, remain-

der to the uses, upon the trusts and *subject to the powers* expressed and contained in the deed of 1814, *ulterior* to the limitations therein for the lives of A. and his son: *Held*, that though the power of sale and exchange was to operate *in derogation* of the life-estates, it was not destroyed by the deed of 1830. *Morgan v. Rutson*, 16 Sim. 234.

2. *Mistake.*—A. being seised of estates in C., and having proposed to settle a certain part of them on his marriage, a settlement was made of all his estates in C., which were intended to be specified and described in the schedule thereunder written, "*but which schedule is not intended to abridge or affect the generality of the description hereinbefore contained.*"

*Held*, from the proposal and other evidence, that the words in italics were inserted by mistake. *Walsh v. Trevannion*, 16 Sim. 178.

3. *Settlement.*—*Children and issue.*—By a marriage settlement, a sum of money was settled upon trusts for the husband for life, then for the wife for life, and, after the death of the survivor, upon trust to pay the principal among the children and issue of the intended husband, to be by him begotten on the body of the intended wife; and if there should be no child or issue of the marriage, or, being such, they should all die in the lifetime of the survivor of the husband and wife, upon other trusts: *Held*, that the children of the marriage, including those dying in the lifetime of the survivor of the husband and wife, took the fund, and that no other issue were entitled. *Gordon v. Hope*, 3 De G. & S. 351.

**4. Trustees. — Powers. — Tenant for life. — Exemption from liability to waste. — Injunction.** — By an indenture of settlement, certain estates consisting of a mansion-house and other premises, were limited to the use of trustees for a term of 1,000 years without impeachment of waste, save only the cutting of ornamental timber, and subject to the said term to the use of the settlor for life, without impeachment of waste save as aforesaid, then to the use of A. B. and his assigns for life, without impeachment of waste, save as aforesaid, with divers limitations over. The trusts of the term were in the first place by cutting, and felling, and selling, and converting into money, all or any part or parts of the timber standing and growing on the said lands which should be of full and ripe growth and not ornamental to the mansion or pleasure grounds attached thereto, or any of the views or prospects of the same, of which timber it was declared that enough of the most ornamental should always remain to preserve the beauty of the place unimpaired, or by demising, mortgaging, or selling the premises comprised in the said term or any part or parts thereof, save and except the mansion-house and certain other premises therein-mentioned, or by all or any of the said ways and means to levy and raise the sum of 10,000*l.* for the settlor, and after the death of the settlor, in like manner to levy and raise two sums of 10,000*l.* each for other parties: *Held*, upon the equitable construction of the trusts of the term, that the trustees had a discretionary power to enter on the estates and cut fit and proper timber, and apply the proceeds in discharge of the sums directed to be raised, and that the Court would protect them in the exercise of that power, there being an absence of all *mala fides* or of any wanton or unreasonable exercise of their discretion.

An injunction was in this case granted at the suit of the trustees, restraining A. B., the tenant for life in possession, from cutting the timber on the estates, on the ground that his doing so would interfere with the discretionary power vested in the trustees.

Exemption from liability to waste annexed to a life estate, is a special power in the tenant for life to appropriate part of the inheritance: *Held*, in this case, that it was by the terms of the settlement made subordinate to the discretionary power conferred on the trustees. *Keke-wich v. Marker*, 3 M.N. & G. 311.

Case cited in the judgment: *Cockerell v. Cholmeley*, 10 B. & C. 564; 1 Cl. & F. 60; 10 Moore, 246; 11 Moore, 17.

**5. Power of appointment to daughters. — Appointment to intended husband, &c.** — A mother had a power of appointing a reversionary fund to her daughters. A daughter, who was under age, being about to marry, the mother appointed that a moiety of the fund should, on the marriage, become the portion of the daughter, and be vested in her or her intended husband in her right, and be paid to the husband, his executors, administrators, or assigns, on the death of the tenant for life:

*Held*, although the husband was not an object of the power, and the fund was reversionary, and the daughter an infant, that there was a valid appointment. *Wombwell v. Hanrott*, 14 Beav. 143.

**6. Appointment to one of a class entitled in default of appointment. — Effect of.** — An appointment to one of a class of a part of a fund as "her part, share, and proportion," does not prevent her participating in the unappointed fund, limited to the class equally in default of appointment. *Wombwell v. Hanrott*, 14 Beav. 143.

**7. Voluntary settlement setting aside. — Pending proceedings for a divorce.** — In 1842, a husband, pending proceedings against him in the Ecclesiastical Court for a divorce, executed a voluntary settlement of real and personal estate. Sequestration afterwards issued against him, which was defeated by the deed. The Court set aside the deed. *Blenkinsopp v. Blenkinsopp*, 12 Beav. 568.

**8. Freehold estate. — Conversion into personality. — Next of kin entitled.** — A. and B. had conflicting claims to a freehold estate. A. proposed that the estate should be sold as soon as possible, and the produce divided between them, and that until the sale, a receiver should be appointed to divide the rents in the same proportions. This was accepted by B. Before the sale, which was postponed, A. died intestate: *Held*, that the property had been converted into personality, and that A.'s next of kin, and not his heir, was entitled.

In such cases, the effect of the act is to be considered, and not the intention as affecting the real and personal representatives. *Hardey v. Huvokshaw*, 12 Beav. 552.

**9. Appointment, power of. — Void appointment.** — A father had a power of appointing to any of his children. Having, in breach of trust, obtained possession of part of the trust funds, he, in 1834, appointed that part to his daughters, in exclusion of his son, under an agreement, that that part should afterwards be conveyed to him, in exchange for an estate of less value. In 1844, he executed a second appointment, reciting the previous dealing with the fund, and he thereby appointed the remaining portion of the trust property, "and all other" the property comprised in the settlement, to his daughters: *Held*, that the first appointment was void; and, 2ndly, that the portion of the property comprised therein was not appointed by the second deed. *Askham v. Barker*, 12 Beav. 499.

**10. Lease. — Executors. — Indemnity to executors against contingent liability under testator's covenants.** — A testator held long leaseholds, some as original lessee and others as assignee. They were sold in the suit: *Held*, that the executors were entitled to be indemnified against the eventual breaches of the covenants, either by a retainer in Court of part of the assets, or by a security of the legatees to refund.

A reference was, in such case, made to the Master, to ascertain what liabilities the estate

might be subject to, in respect of the covenants, and what amount ought to be set apart, with liberty to the legatees to propose a proper security. *Dobson v. Carpenter*, 12 Beav. 370.

11. *Vesting.—Gift over on death before becoming entitled to payment.*—Construction of a gift over upon death before becoming entitled to payment.

Personalty was given to parents for life, with remainder to all their children equally, the shares to be paid at 21, or marriage, unless in the lifetime of the parents, in which case, payment was to be made on the death of the survivor. There was a gift over on the death of a child before becoming entitled to payment. A child attained 21, but died in the lifetime of her parents: *Held*, that the gift over did not take effect. *In re Williams*, 12 Beav. 317.

#### FRAUD.

1. *Setting aside conveyance.—Inadequate consideration.—Pecuniary pressure and without proper legal advice.*—Conveyance by the plaintiff, an eldest son, to the defendants, his brothers, of his interest in an estate, for an inadequate consideration, set aside, on the ground of the plaintiff's ignorance of his rights, and the absence of a full and free disclosure of all the material facts known by the defendants, and of the plaintiff being under pecuniary pressure and without proper legal advice. *Sturge v. Sturge*, 12 Beav. 229.

2. *Setting aside conveyance of estate.*—An estate was devised to E. S. in tail. By her marriage settlement she retained a power of appointing the fee, and by her will she appointed it to her children, excluding the eldest, otherwise provided for. No fine or recovery was levied after her death. After her death, the eldest and the four younger sons agreed to divide the estate, and the eldest agreed to sell his share to the latter, and he accordingly conveyed all his interest. The conveyance was set aside on the ground of the plaintiff's ignorance of his rights, and of the absence of a full and free disclosure of all the material facts known by the defendants, and of the plaintiff being under pecuniary pressure and without proper legal advice. *Sturge v. Sturge*, 12 Beav. 229.

3. *Legal and equitable mortgagee.—Negligence.—Inquiring as to custody of deeds.—Priority.*—A legal mortgagee is not to be postponed to a prior equitable one, upon the ground of his not having got in the title-deeds, unless there be fraud, or gross or wilful negligence on his part; and the Court will not impute fraud, or gross or wilful negligence to the legal mortgagee, if he has *bona fide* inquired for the deeds, and a reasonable excuse has been given for not delivering them to him, but the Court will impute fraud, or gross or wilful negligence to the mortgagee, if he omits all inquiry as to the deeds. *Hewitt v. Loosemore*, 9 Hare, 449.

Cases cited in the judgment; *Flumb v. Fluit*, 2 Anst. 432; *Evans v. Bicknell*, 6 Ves. 174;

*Martinez v. Cooper*, 3 Russ. 198; *Barnett v. Weston*, 12 Ves. 130; *Harper v. Faulder*, 4 Madd. 129; *Farrow v. Rees*, 4 Beav. 18.

#### MORTGAGE.

1. *Receiving rents between report and day of payment.—Payment of arrears and costs on continuing account.*—Where a mortgagee receives rents between the report and day of payment, it is not the practice, on directing the accounts to be continued and the time to be extended, to order the mortgagor forthwith to pay the arrears of interest and costs. *Buchanan v. Greenway*, 12 Beav. 355.

2. *Foreclosure.—Inquiry.*—Upon a bill of foreclosure by first mortgagee, there was a contest between the defendants, the *junior* mortgagees, as to their respective priorities. The Court *held*, that it must, in the first instance, direct an inquiry. *Duberty v. Day*, 14 Beav. 9.

3. *Destruction of deeds.*—A mortgagee having inadvertently burnt the mortgage-deed and the documents relating to the title to the mortgaged estate, some of which were originals and others attested and office copies, was ordered, in a foreclosure suit, not only to procure fresh attested and office copies, but to make compensation for the damage done to the estate by the destruction of the deeds, the amount to be settled by the Master and deducted from the mortgage-debt. *Hornby v. Matcham*, 16 Sim. 325.

4. *Mines.*—A mortgagee in possession, who had opened and worked mines on the mortgaged estate, charged with his receipts but disallowed his expenses. *Thorncroft v. Crockett*, 16 Sim. 445.

5. *Principal and surety.—Redemption.—Tacking.*—A. mortgaged his freehold and copyhold estates, and some drainage bonds, and, by the same deed, his daughters mortgaged their freehold and copyhold estates to B., to secure 6,000*l.* lent by B. to A., and the deed declared that, without prejudice to any of the rights or remedies of B., his heirs, executors, &c., as between A., his heirs, executors, &c., on the one hand, and the daughters, and their heirs, executors, &c., on the other hand; A., his heirs, executors, &c., should be primarily liable to the payment of the 6,000*l.*, and that his freehold and copyhold estates therein comprised should be primarily liable to answer and make good the 6,000*l.* Six years afterwards, A. mortgaged his freehold and copyhold estates comprised in the prior mortgage, and also the drainage-bonds, to B., to secure 700*l.* lent to him by B.: *Held*, that B. was not entitled as against A.'s daughters, to tack his second mortgage to the first, and that the daughters were entitled to redeem the first mortgage on payment of the 6,000*l.* *Bowker v. Bull*, 1 Sim. N. S., 29.

6. In March, 1840, A., and B. a solicitor at Carmarthen, raised 2,500*l.* by sale of a sum of stock of which they were trustees, with the intention of lending it, on mortgage, to C., who resided at Carmarthen, but spent part of the

year in London. *A.* enabled *B.* to receive the 2,500*l.* for the purpose of the loan, and intrusted him with the conduct of the transaction. Accordingly *B.* prepared the mortgage-deed; and, on the 29th of May, 1840, through his London agents and by arrangement between him and *C.*'s solicitor, procured *C.* (who knew that the money was in *B.*'s hands) to execute it, and to sign a receipt, on the back of it, for the 2,500*l.* The agents took the deed away with them, and shortly afterwards, procured *A.* to execute it, and then sent it to *B.* It having been arranged, between *B.* and *C.*, that the mortgage-money should be paid into the Carmarthen Bank to *C.*'s credit, *B.* on the 31st of May, paid 513*l.*, and on the 31st of October, 1,050*l.*, accordingly, in part of the 2,500*l.* In November he died insolvent.

*Held*, that as between *A.* and *C.*, *A.* was to be treated as mortgagee for the whole 2,500*l.* *West v. Jones*, 1 Sim. N. S., 205.

7. *Debt.—Extinguishment.—Priority.—A.* having a reversionary interest in personalty which he had mortgaged, first to *B.* and next to *C.*, agreed to sell it to *D.* for 1,500*l.*; and *D.* having, at his request, paid off *B.* out of the 1,500*l.*, he agreed that, until the sale should be completed, *D.* should stand in the place of *B.*, and have the full benefit of her security.

*Held*, that *B.*'s debt was extinguished by the payment made to her by *D.*; and, consequently, that *D.* was not entitled to priority over *C.* *Watts v. Symes*, 16 Sim. 640.

8. *Tacking.*—In 1843, *A.* mortgaged freeholds and leaseholds to *B.*, for 200*l.* In 1845, after reciting that mortgage, he charged the freeholds and leaseholds with the further sum of 400*l.*, which he then owed *B.*, and assigned other property to *B.*, as a further security for that sum, and empowered *B.* to sell the property and to retain the 400*l.* out of the proceeds.

*Held*, that the property assigned in 1845 was redeemable on payment of the 400*l.* only. *Watts v. Symes*, 16 Sim. 647.

9. *Priority.—Notice.*—*A.* agreed to sell an estate to *B.*, for 1,400*l.*, of which 400*l.* was to be paid on the execution of the conveyance, and 1,000*l.* was to be secured on mortgage of the estate. *B.* paid *A.* the 400*l.*, and *A.* conveyed the estate to him; but kept possession of the conveyance and of the title-deeds. Some time afterwards, *B.* mortgaged the estate to *A.* for the 1,000*l.*; but in the interim he had, unknown to *A.*, mortgaged the estate to *C.*; but *C.* did not investigate the title to the estate, or make any inquiry relative to the title-deeds.

*Held*, that *A.* was entitled to priority over *C.* *Worthington v. Morgan*, 16 Sim. 547.

10. *Mortgagor acting as solicitor for mortgagee.—Constructive notice.*—Where a mortgagee is himself a solicitor, and prepares the mortgage deed, the mortgagee employing no other solicitor, the mortgagor must be considered to be the agent or solicitor of the mortgagee in the transaction, although the mortgagor, acting as such solicitor, is not paid by the mortgagee; for the nature of the trans-

action is, that all expenses are borne by the mortgagor.

It does not necessarily follow in such a case, because the mortgagor is the solicitor of the mortgagee, that, therefore, the mortgagee has constructive notice of facts connected with the title which are known to the mortgagor. *Hewitt v. Loosemore*, 9 Hare, 449.

11. *Foreclosure suit.—Defect of parties.—Claim.*—A party to a suit in which a decree of foreclosure has been made, in the absence of another party interested in the estate, whose interest was not disclosed on the pleadings, is, notwithstanding the imperfection of the suit, bound by the decree of foreclosure.

A party to a foreclosure suit, whose interest is thereby foreclosed, and who afterwards becomes entitled to an interest in the same estate by devise or otherwise, from another person who was not a party to the foreclosure, may bring his bill of redemption.

Relief will not be given in such a case, on a claim for redemption, stating only that the plaintiff is entitled to the equity of redemption under certain instruments, but not stating any of the proceedings in the suit for foreclosure, or the grounds on which the plaintiff seeks to set it aside. *Bromitt v. Moor*, 9 Hare, 374.

12. *Stock.—Reversionary Interest.—Form of decree.—Sale.—Foreclosure.*—A mortgagee of a reversionary interest in stock filing a bill to realise his security, is entitled to a decree for foreclosure in default of payment, that being the ordinary method whereby the Court excludes the right of redemption; and although he may, in some cases, be entitled to a decree for sale, there is no rule or practice of the Court which compels him to submit to such a decree. *Wayne v. Hanham*, 9 Hare, 62.

Cases cited in the judgment: *Slade v. Rigg*, 3 Hare, 35; *McDonough v. Shrewbridge*, 2 Ball & B. 555; *Drew v. O'Hara*, 2 Ball & B. 562, n.

13. *Right to add premiums of insurance to amount of debt.—Privy of mortgagor.*—A mortgagee of houses, who is not by express contract with the mortgagor entitled to insure the premises against fire at the mortgagor's expense, nor to require the mortgagor so to insure them, is not entitled to add to his mortgage debt, and charge upon the property, the premiums which he may pay for such an insurance effected by him without the privy of the mortgagor. *Dobson v. Land*, 8 Hare, 216.

14. *Trustees.*—Distinction between the cases of mortgagees and trustees in the ordinary sense. *Dobson v. Land*, 8 Hare, 220.

15. *Right to deal for their own benefit.*—The principle upon which the Court restrains persons filling a fiduciary character from having any dealings for their own benefit, does not necessarily apply to the case of mortgagor and mortgagee. *Dobson v. Land*, 8 Hare, 221.

[To be continued.]

# The Legal Observer,

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SATURDAY, OCTOBER 23, 1852.

## ANNOTATIONS ON THE COMMON LAW PROCEDURE ACT, No. V.

### PLEADINGS IN GENERAL.

THE changes recommended by the Common Law Commissioners in the form and practice of pleading,—changes now embodied in the Act 15 & 16 Vict. c. 76,—have been the subject of much disparaging criticism. The Commissioners might have swept away the old system and substituted nothing, or they might have suggested an entirely new and improved system. Both courses have their advocates amongst those who condemn that actually adopted, which continues the existing system amended by the abolition of useless and inconvenient forms, and by rectifying all proved abuses.

It is beside our present purpose to inquire, whether the ends of justice and the dignity of the Superior Courts would be best consulted by abolishing written pleadings altogether, and substituting the oral statements of parties or their professional advocates, pretty much after the fashion prevailing in the County Courts; or whether, supposing the expediency of retaining written pleading be conceded, it would be desirable that parties should be permitted to make their statements more at large, according to the practice which obtains, with various modifications, in nearly all foreign countries.

It is enough to remind our readers, that however it may be arrived at, it is essential to the ends of justice the particular matter or question for decision should be developed before the decision is come to, and that the peculiar and distinctive principle of the system of pleading established in the Courts of Common Law in England is, that it compels litigant parties, by written pleadings, to raise some disputed

question of law or fact, upon which both parties agree that the decision of the tribunal referred to should proceed. Whether a system of pleading founded upon such a principle is so radically defective as to require for the promotion of justice that it should be swept aside, is not now the question. The Legislature has determined that the system is to be upheld, and that its excrescences are to be lopped off, its forms simplified, and its subtleties discouraged. The object of this paper is to afford our readers the means of judging to what extent the intention of the Legislature has been carried out by its enactments.

It is expressly provided (by sect. 49), that “all statements which need not be proved,” or in other words, all superfluous statements, shall be omitted. As instances of the application of the rule thus laid down, it is expressly declared, that statements of time, quantity, quality, and value, when these are immaterial, the statement of losing and finding and bailment, of acts of trespass *vi et armis* and *contra pacem*, of promises in *indebitatus* counts, and mutual promises to perform agreements, and “all statements of a like kind,” are to be omitted. The effect of this enactment in shortening as well as simplifying pleadings, may be conceived by those who are intimately acquainted with the language of pleading, and will be fairly illustrated by selecting any ordinary form from Chitty’s Pleading, and comparing it with the example of pleading contained in Schedule B. of the new Act, and prescribed to be used in a corresponding case.<sup>1</sup>

The scandal brought upon the administration of justice by the defeat of just claims, by reason of mere defects in form, is sought

<sup>1</sup> See the Forms of Pleadings, *ante*, pp. 457 et seq.

to be prevented by providing, that "no pleading shall be deemed insufficient for any defect which could heretofore only be objected to by *special demurrer*;" whilst the sufficiency of the pleading is intended to be secured by allowing either party to demur to his adversary's pleading, on the ground that such pleading does not disclose a "sufficient ground of action, defence, or reply," as the case may be. When issue is joined on such a demurrer, the Court is to give judgment according to the right of the matter in law without regard to form. Whilst special demurrers and the subtleties upon which they frequently proceeded are got rid of, the integrity of pleadings is to be preserved, by allowing demurrers upon matters of substance, by which questions of the greatest difficulty and importance may frequently be decided in the speediest and least expensive mode.

It was apprehended that the license as to the form of pleading consequent upon the abolition of special demurrers, may lead to the practice of framing pleadings, so as to "prejudice, embarrass, or delay the fair trial of an action," to prevent which it is enacted (sect. 52), that such pleadings may be struck out, or amended, by the Court or a Judge, upon such terms as to costs, &c., as the Court or Judge shall see fit.

The troublesome and costly proceeding of a rule at every stage of the pleading is abolished, and a notice is to be substituted requiring the opposite party to declare, reply, rejoin, or as the case may be, within four days, and such notice may be delivered separately or indorsed on any pleading.

Declarations and other pleadings are not only to be entitled of the proper Court and of the day of the month and year when pleaded, but are also to be entered on the record made up for trial and on the judgment roll, under the real date. The dilatory, and in many instances superfluous, statement required by the rule of pleading, and known as the *profert of written instruments*, is now declared to be unnecessary, and if introduced, is not to entitle the opposite party to oyer, but a party answering a pleading in which a document is referred to, is to be at liberty to set out any part of such document that he deems material as a part of his pleading. Pleadings are to be further shortened by averring *performance of conditions precedent generally*, and not in detail; and the opposite party who relies upon the non-performance is to specify in his pleading the condition or con-

ditions the performance of which he designs to contest.

The *time of declaring* is limited to one year after the writ of summons is returnable, and the *commencement and conclusion of the declaration* is to be in a simple form specified by the Act (sect. 59, p. 396), and varied according to the circumstances, when the plaintiff declares after the defendant has pleaded in abatement the non-joinder of an added defendant. In actions of libel and slander, the prefatory averment, showing how the words or matter were used in a defamatory sense, may be omitted, but the plaintiff may specify the defamatory sense, in which he complains the words were used, which may be put in issue by the denial of the alleged slander, and if the words or matter set forth show a cause of action, the declaration will be sufficient. (See sect. 61, p. 396.)

*As to pleas* and subsequent pleadings, where the defendant is within the jurisdiction, the *time for pleading*, unless extended by an order, is to be *eight days*, and notice to plead may be indorsed upon the declaration, or delivered separately. No rule to plead, or demand of plea, is necessary. *Express colour* and *special traverses* are also declared to be unnecessary, whilst it is expressly enacted, that the allegation of *actionem non* or *actionem ulterius non*, or any prayer of judgment, shall be unnecessary as well as the allegation of *precludi non* in a replication. Forms for the commencement and conclusion of pleas, whether pleaded singly or with other pleas, and whether addressed to a part or the whole of the declaration, are given in the body of the Act (sect. 67, p. 396), and are sufficiently brief and simple. The mode of pleading defences, arising after action, and *puis darrein continuance*, are specially provided for by sections 68 and 69.

*Payment of money into Court* by way of compensation or amends, is to be allowed in all actions, except assault and battery, false imprisonment, libel, slander, malicious arrest or prosecution, crim. con., and seduction; and when money is paid into Court, the defendant may plead, in the form prescribed by sect. 71, that the sum so paid is sufficient to satisfy the plaintiff's claim in respect of the matter pleaded to; and no rule or order to pay money into Court is to be necessary, except in the case of several defendants. The plaintiff may either accept the sum paid into Court and tax his costs of suit, or may reply that the sum paid is not enough to satisfy his claim,

and upon this issue being found against him, the defendant is to be entitled to the costs of suit. Pleas good in substance are not to be objectionable on the ground that the declaration is treated by them as framed in contract or in tort. Payment, set-off, and other pleadings capable of being construed distributively, are to be taken distributively, and the issues disposed of accordingly. By sects. 76, 77, and 78, the whole, or a material part, of a declaration, plea, replication, or subsequent pleading, *may be traversed*, a license the expediency of which is much questioned; or either party may plead that he joins issue upon the last preceding pleading (sect. 79). Either party is also to be permitted, by leave of the Court or a Judge, to *plead and demur to the same pleading*, but the Court or Judge, before granting such leave, may require an affidavit and may direct which issue shall be first disposed of (sect. 80).

No rule of Court to *plead several matters* is necessary when a Judge's order is obtained for that purpose, and the Court or a Judge is empowered to authorise the plaintiff or defendant to plead in answer to his adversary's pleading "as many several matters as he shall think necessary" to sustain his action or defence. Objections to the pleading of several pleas, replications, &c., on the ground that they are founded on the same ground of answer or defence, are to be heard upon the summons to plead several matters (see sect. 83).

Certain pleas of ordinary occurrence and specified in sect. 84 (*ante*, p. 398), are permitted to be pleaded together as of course, without leave of the Court or a Judge, but, except in the cases so provided for, a party pleading several matters without leave, subjects himself to have judgment signed against him; but such judgment may be set aside upon terms. The signature of counsel is properly dispensed with to all pleadings (sect. 85).

One *new assignment* only is to be allowed to any number of pleas to the same cause of action, and it must state that the plaintiff proceeds for causes different from those the pleas profess to justify, or for an excess beyond what the pleas justify, or both, and no plea already pleaded is to be again pleaded to a new assignment, except a plea of denial, unless the Court or a Judge is satisfied that the repetition of such plea is essential to a trial on the merits (s. 88).

In conformity with the existing practice upon general *demurrers*, in the margin of the demurrer some *substantial matter of*

*law* intended to be argued shall be stated, and the absence of such a statement, or a frivolous statement, will subject the party demurring to judgment as for want of a plea upon application to the Court or a Judge;—the manifest intention being to discourage, and indeed prohibit, demurrers upon matters of a formal or technical nature, and to afford facilities, by the instrumentality of that course of procedure, for the judicial decision of questions of law.

As already intimated, *examples of the forms of pleading* required in cases of common occurrence are furnished in a schedule to the Act (see pp. 458 and 459), but it is expressly declared, that it shall *not be irregular* to depart from the *letter* of such forms, so long as the *substance* is expressed without prolixity.

Such are the enactments by which the Legislature has endeavoured—whilst retaining the fundamental and distinctive character of the ancient system of pleading—to adapt it to modern exigencies, and at the same time to guard against prolixity and delay, and destroy the influence of those subtleties, which have too often shackled the judgment of the Bench and shocked the common sense of the community.

The general provisions of the Act come into operation *after this day*, so that the sufficiency of the amendments in pleading, as well as practice, will soon be tried by the unerring test of experience. The failure or success of the measure must depend, in a considerable degree upon the spirit in which it is administered by the Judges and adopted by the Profession. At the hands of the latter, the experiment is entitled to, and, we venture to predict, will obtain a *fair trial*.

## NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

### NISI PRIUS OFFICERS.

15 & 16 VICT. c. 73.

Marshal and Clerk at Nisi Prius in the Court of Queen's Bench and Marshals in the Courts of Common Pleas and Exchequer abolished, from and after the 24th October, and their duties to be performed by the Associates respectively; s. 1.

Records, &c., to be transferred to Associates; s. 2.

The Chief Justices or the Chief Baron of the said Courts respectively to appoint future Associates; s. 3.

Clerks, not exceeding two, to be ap-



pointed by the Associates, subject to approval of the Chief Justices or Chief Baron of the said Courts respectively; s. 4.

Offices to be provided for the Associates in the offices of the Courts, or their vicinity; s. 5.

In case of sickness or other reasonable cause, the duties of the Associates may be performed by deputy; s. 6.

Power to Treasury to fix salaries of Judges Marshals; s. 7.

Clerks to be appointed by the Judges; s. 8.

Present officers re-appointed to hold their offices during good behaviour; s. 9.

Treasury to cause Table of Fees to be prepared, and submitted to Judges for approval; s. 10.

Officers and clerks not to act as barristers, attorneys, or agents; s. 11.

Treasury to fix salaries of officers and clerks. Power to raise salaries; s. 12.

Salaries, how charged; s. 13.

Officers to render accounts of fees received to the Treasury; s. 14.

Allowance to officers on their retirement from office; 4 & 5 Wm. 4, c. 24; (s. 15.)

Ushers and subordinate officers, and their deputies, to render accounts of fees to Treasury; s. 16.

Fees of such subordinate officers may be abolished; s. 17.

The number of subordinate officers to be fixed by Treasury, with the sanction of the Chief Justices and Chief Baron; s. 18.

Subordinate officers to be appointed by the Chief Justices and Chief Baron respectively; s. 19.

Power to increase or reduce the number of such subordinate officers; s. 20.

Salaries of subordinate officers to be fixed by Treasury, with sanction of the Chief Justices and Chief Baron, and to be paid out of Consolidated Fund; s. 21.

Compensation to hereditary Chief Proclamator and hereditary Chief Usher; s. 22.

Compensation to officers appointed by hereditary Chief Proclamator or hereditary Chief Usher, and to subordinate officers; s. 23.

Not to affect existing Messengers of Exchequer; s. 24.

Appointments to be made without pecuniary consideration; s. 25.

Officers and clerks not to receive gratuities on pain of dismissal; s. 26.

No compensation to be allowed for loss of right of appointment; s. 27.

Certain fees on Circuit abolished; s. 28.

Account to be laid before Parliament; s. 29.

Duties to be performed in person; s. 30.

Fees of Marshal's men and Judge's bailiff abolished; s. 31.

As to performance of duties of hereditary Chief Usher and Messenger of the Court of Exchequer; s. 32.

The following are the sections of the Act:—

An Act to make Provision for a permanent Establishment of Officers to perform the Duties at Nisi Prius, in the Superior Courts of Common Law, and for the Payment of such Officers and of the Judges' Clerks by Salaries, and to abolish certain Offices in those Courts. [30th June, 1852.]

Whereas the officers in the Superior Courts of Common Law who perform the duties at Nisi Prius hold their offices and appointments during pleasure, and such Officers and the Clerks at the Judges' Chambers are remunerated by fees received by them from the suitors, and it is expedient to provide a permanent establishment of such officers, and that they and the said clerks be paid by salaries, and that the fees now payable by the suitors be diminished: Be it enacted, as follows:—

1. From and after the 24th day of October after the passing of this Act the offices of Marshal and Clerk at Nisi Prius in the Court of Queen's Bench, and Marshal in the Courts of Common Pleas and Exchequer, shall be and the same are hereby abolished; and all acts, duties, and services now and heretofore done, performed, and rendered by such Marshals and Clerk at Nisi Prius respectively shall be done, performed, and rendered by the Associates in the Courts of Queen's Bench, Common Pleas, and Exchequer, who shall also continue to perform all acts, duties, and services now done, performed, and rendered by them in respect of the several offices now held by them respectively; and such acts, duties, and services, when so done, performed, and rendered by the said Associates, or their successors, or any of them, shall be good and valid in law to all intents and purposes; and all lawful powers and authorities now and heretofore vested in or exercised by the Marshal and Clerk at Nisi Prius in the Court of Queen's Bench, and the Marshals in the Courts of Common Pleas and Exchequer, by virtue or in right of their respective offices, shall be vested in and exercised by the said Associates in the Courts of Queen's Bench, Common Pleas, and Exchequer respectively.

2. All the records, books, papers, and documents, of and concerning the duties and business of the several offices of the Courts of Queen's Bench, Common Pleas, and Exchequer, so abolished as aforesaid, shall, on or before the 24th day of October, 1852, be delivered by the several officers of the said Courts respectively now having the custody of the same, into the custody and possession of the Associates in the Courts of Queen's Bench

Common Pleas, and Exchequer respectively, to be by them kept and preserved; and searches may be made, and copies or extracts of and from the said records, books, papers, and documents shall and may be had and taken, at such times and in such manner as hath been the accustomed practice in the several offices hereby abolished; and the officers, whose offices are hereby abolished, shall and they are hereby required, on or before the said 24th day of October, 1852, to pay over to the Associates of the said Courts respectively all and every sum and sums of money, if any, which shall have been paid into and shall be in their hands by virtue of their said respective offices, and to render an accurate account thereof to the said Associates of the said Courts respectively.

3. When and so often as any vacancy shall occur in any of the said offices of Associate in either of the said Courts respectively, by death, resignation, or otherwise, it shall and may be lawful for the Lord Chief Justice or Lord Chief Baron of the Court in which such vacancy shall occur to nominate and appoint some fit and proper person to fill such vacant office.

4. The Associates in the Courts of Queen's Bench, Common Pleas, and Exchequer, and their successors, shall and may, in and for the discharge of the duties of their respective offices, have not exceeding two clerks, as the Lord Chief Justice or the Lord Chief Baron of the Court for the time being to which such Associates respectively belong shall determine to be necessary and proper; and all such clerks shall and may be appointed by the Associates of the said Courts respectively for the time being, with the sanction and approval of the Lord Chief Justice or Lord Chief Baron of the Court to which such Associate shall belong; and such clerks as are appointed shall hold their offices during pleasure.

5. Convenient offices shall be provided by the Commissioners of her Majesty's Treasury for the transaction of the business of the office of Associate in the Courts of Queen's Bench, Common Pleas, and Exchequer, in the offices of the said respective Courts, or their immediate vicinity; and the places for such offices shall be fixed by the Lord Chief Justice, or Lord Chief Baron of the said Courts respectively, as soon as possible after the passing of this Act, and may be changed by them from time to time as occasion may require.

6. If the said associates, or any or either of them, shall, from, sickness or other unavoidable cause, have occasion to be absent from the business of their or his office for a longer period than two months at any one time, then and in every such case it shall and may be lawful for the Lord Chief Justice or Lord Chief Baron for the time being of the Court to which such officer shall belong to give leave of absence by his order in writing to such officer, and, if necessary, to appoint a deputy in his place during such time as shall be expressed in such order; and the name of such deputy, and also the cause and time of such

absence, shall be stated in such order; and such deputy may, if occasion require it, be changed by the Lord Chief Justice or Lord Chief Baron; and every deputy so appointed shall be paid by the principal for whom he shall act such remuneration for his services as the said Lord Chief Justice or Lord Chief Baron shall direct in such order, not being in any case less than one-third of the amount fixed and settled by this Act as the salary of such principal officer.

7. A fixed sum, to be settled for the several Circuits respectively by the said Commissioners of her Majesty's Treasury, by and with the sanction of the said Lord Chief Justices and Lord Chief Baron, shall be hereafter paid by way of salary to each of the Judges Marshals on each Spring and Summer Circuit, and to the Marshal of the Senior Judge on the Winter Circuit, and on a special Commission, for his services thereon; such sum to be paid to the Marshal upon notice in writing being given by the Judge, by whom such Marshal is appointed, of the name and address of the person whom he has appointed to be his Marshal, and of the Circuit which such Judge has chosen, or the Commission to which he has been appointed, to the Lords Commissioners of her Majesty's Treasury for the time being, who shall, upon the receipt of such notice, pay the sum so fixed on as aforesaid for such Circuit or Commission to the person therein mentioned as having been appointed to be Marshal.

8. It shall be lawful for the Lord Chief Justices and Lord Chief Baron each to appoint three clerks, one of whom is to act ascrier on the Circuit, and in London and Middlesex, and for the other Justices and Barons each to appoint two clerks, one of whom is to act ascrier on the Circuit; and such clerks shall perform all the duties heretofore performed by the Judges' clerks; and shall hold their offices during the pleasure of the Judges by whom they are appointed, or if continued by their successors during the pleasure of such successors.

9. And whereas it is expedient that the several officers of the said Superior Courts, set forth and described in Schedule (A.) to this Act annexed, who now hold their offices and appointments during pleasure, should be re-appointed, and should hold such offices and appointments during good behaviour: Be it enacted, That the persons now holding the offices and appointments in the said Schedule (A.) as such officers, shall be and the same are hereby appointed and declared to be such officers in the said Superior Courts, and they and their successors shall respectively hold such offices and appointments during good behaviour.

10. And whereas it is expedient that a new table or tables of fees proper to be taken in the said Superior Courts, and their several offices, and at the Judges' Chambers, and by the Clerks of Assize acting as Associates on the Circuits should be prepared with reference to

the various changes and alterations which have been or may be made in the process, practice, and proceedings of those Courts, and to the diminution of expense, where practicable, to the suitors: Be it enacted, That it shall and may be lawful for the Commissioners of her Majesty's Treasury, and they are hereby required, forthwith to prepare or cause to be prepared a table or tables of fees, specifying what fees are proper to be demanded and taken in the said Courts and offices, at the Judges' Chambers, and on the Circuits, and what fees should be abolished; and such table or tables shall be laid for approval before the Judges of the said Courts; and the said Judges or any six or more of them, of whom the Lord Chief Justices and Lord Chief Baron shall be three, are hereby empowered and required, as soon as conveniently may be, to revise and settle the said table or tables of fees so prepared as aforesaid, and from time to time to add to, or reduce, alter, or amend the same, as they may deem necessary and proper, and the said table or tables of fees so revised and corrected as aforesaid from time to time to allow and sanction, by affixing their signatures respectively thereto, and to establish the same in and for the said Courts; and the said Commissioners of her Majesty's Treasury are required, so soon and so often as each table or tables of fees have been sanctioned and allowed by the Judges, to cause the same to be inserted and published in the *London Gazette*; and from and after such publication no other fees than those sanctioned and allowed as aforesaid shall on any pretence whatever be demanded or taken by any officer or clerk of the said Courts in respect of any duty or service to which such table or tables of fees may relate; provided that until the publication of such table or tables of fees under the authority aforesaid, the fees now lawfully taken by the said officers and clerks shall and may continue to be taken.

11. No person holding the office of Associate in the Courts of Queen's Bench, Common Pleas, and Exchequer, or the appointment of Judges' clerk, or of clerk in any of the offices of the Superior Courts, shall, either directly or indirectly, act as a barrister, attorney, or solicitor, or as agent of any attorney or solicitor, in any Court of Law or Equity in the United Kingdom, either separately or in partnership with any other, during such time as he shall hold such office of Associate, or act as such clerk: Provided always, that nothing in this Act contained shall operate to prevent any attorney or solicitor, or agent of any attorney or solicitor, now practising in any Court of Law or Equity, and now holding any office or appointment mentioned in this Act, from continuing to practise as such attorney, solicitor, or agent, notwithstanding this Act.

12. It shall and may be lawful for the said Commissioners of her Majesty's Treasury, and they are hereby authorised and required, by and with the sanction of the Lord Chief Justices and the Lord Chief Baron, to fix and

appoint an annual sum by way of salary to the several officers and clerks whose offices and appointments are respectively set forth and described in the Schedule (B.) to this Act annexed, which salaries they shall be entitled to receive in lieu of all fees and emoluments now received by such officers and clerks respectively; and the said Commissioners, with such sanction as aforesaid, shall have power, on each vacancy, in any such office or appointment, to revise the salary attached thereto, and to fix another salary in lieu thereof, having regard to the nature, duties, and responsibility of such office or appointment; and such salaries, together with the necessary expenses of the respective offices, shall be payable and paid by equal quarterly payments on the 31st day of March, the 30th day of June, the 30th day of September, and the 31st day of December in every year, together with a proportional part of such annual sum for the time which at the decease of the person entitled thereto shall have elapsed since the last payment thereof: Provided always, that if any of the officers or clerks appointed or to be appointed under the provisions of this Act shall be entitled to and in the receipt of compensation allowance awarded to them under any Act or Acts of Parliament regulating or relating to their respective offices or appointments, which shall exceed the amount of salary fixed and determined as aforesaid, such officers and clerks respectively shall be entitled to and shall receive the full amount of such compensation allowance by way of salary so long as they shall respectively hold their offices or situations; and in cases wherein such compensation allowance shall be less than the amount of salary so fixed and determined as aforesaid, the same shall merge and be considered as part of and included in the said salary.

13. The salaries and compensation allowances by way of salary hereinbefore granted to the several officers and clerks of the said Courts respectively, and also the salaries and compensation allowances by way of salary, if any, which shall and may be granted to the several officers and clerks under the provisions of this and any other Act or Acts of Parliament regulating or relating to the same, together with the necessary and unavoidable expenses of the said offices respectively, shall be paid and payable out of and be charged and chargeable upon the fees received by the said officers and clerks in the said Courts respectively; and the surplus of such fees arising in each of the said Courts, after the payment of the said salaries and expenses, shall be paid into the receipt of the Exchequer to the credit of the Consolidated Fund of the United Kingdom of Great Britain and Ireland, at such times and in such manner as the Commissioners of her Majesty's Treasury for the time being shall think proper to direct; and in the event of the fees so received by the said officers and clerks respectively of any of the said Courts being at any time insufficient to defray the said salaries and compensations, if any,

and other necessary expenses, it shall be lawful for the said Commissioners of her Majesty's Treasury, and they are hereby authorised and required, to direct the amount of such deficiency to be charged upon and paid out of the said Consolidated Fund.

14. The said officers and clerks, mentioned and described in Schedule (C.) to this Act annexed, shall respectively cause all fees received by them, and all disbursements made thereout for salaries and other necessary expenses, to be duly and regularly entered in one or more books, to be kept for that purpose in their offices, distinguishing the fees received under their several heads, and also the particulars and amount of every disbursement; and shall quarterly, within one month after the 31st day of March, the 30th day of June, the 30th day of September, and the 31st day of December in every year, render a true and faithful account in writing, to the Commissioners of her Majesty's Treasury for the time being of all such fees and disbursements, in such form of account, and with such particulars of receipt or otherwise, and accompanied by such vouchers, as the said Commissioners of her Majesty's Treasury shall from time to time think proper to require and direct; and if upon examination of any such account it shall appear to the said Commissioners of her Majesty's Treasury that any fees have not been duly accounted for, or that any unreasonable or improper charge or deduction has been made in such account, it shall be lawful for the said Commissioners of her Majesty's Treasury finally to settle and adjust the same in such way as they may think reasonable and proper, and the said officers and clerks of the said Courts by whom such accounts shall have been rendered shall and they are hereby required to alter and amend the said account accordingly: Provided always, that the officers and clerks of the said Courts respectively shall submit their books of account to the inspection of the said Commissioners of her Majesty's Treasury, or any person or persons whom they may employ for that purpose, whenever the said officers and clerks shall be required so to do.

15. Every person appointed or to be appointed under the provisions of this Act as an officer of the said Courts respectively, who shall hereafter resign his office or situation with the sanction and under the authority of the Lord Chief Justice or Lord Chief Baron of the Court to which he shall belong, in consequence of his being incapable, from infirmity of mind or body, to discharge the duties thereof, shall be entitled to receive such superannuation allowance as the said Commissioners of her Majesty's Treasury may think proper to direct; and in ascertaining and awarding the amount of such superannuation allowance the said Commissioners of her Majesty's Treasury shall take into consideration the whole period during which any such person shall have been permanently employed in any office or situation in either of the said Courts, or in any other public office or situation, prior to the passing of this Act,

and shall proceed according to the principles laid down by an Act passed in the 4 & 5 Wm. 4, c. 24, intituled "An Act to alter, amend, and consolidate the Laws for regulating the Pensions, Compensations, and Allowances to be made to Persons in respect of their having held Civil Offices in his Majesty's Service;" and all such sums and allowances which shall be so awarded and granted under the authority aforesaid shall be paid and payable and be charged and chargeable in the same way as is hereinbefore provided in respect of the salaries of the officers of the said Courts respectively, and the necessary expenses of the said offices.

16. And whereas the ushers, court-keepers, messengers, assistants, and other subordinate offices of the said Superior Courts, and attendants on the Judges (other than the Judges' clerks hereinbefore-mentioned) are entitled to receive fees from the suitors in the said Court, and it is expedient that the said suitors should be relieved from the payment of such fees, and that adequate salaries should be provided for such officers, assistants, and attendants; Be it enacted, That all persons holding any subordinate offices or appointments in any of the said Superior Courts, as ushers, court-keepers, messengers, assistants, and the like, or as attendants on the Judges (other than the Judges' clerks hereinbefore-mentioned) and their deputies, shall respectively, on or before the 24th day of October, 1852, render a true account in writing to the said Commissioners of her Majesty's Treasury of all fees and emoluments received or claimed to be received by them, or on their behalf, and also of the annual value of all such fees and emoluments received by them, or on their behalf, and also of the annual salary, allowances, or profits allowed to or received by them respectively, whether as principals or deputies, and also of the nature and amount of disbursements, if any, in respect of any of such offices or appointments, for the space of five years next preceding the passing of this Act; and the accounts so rendered shall be in such form, and with such particulars of receipt or otherwise, and accompanied by such vouchers, as the said Lords Commissioners shall from time to time think proper to require and direct.

17. It shall and may be lawful for the said Commissioners of her Majesty's Treasury, and they are hereby empowered, by and with the consent of the said Lord Chief Justices and the Lord Chief Baron, to abolish all or any of the fees set forth in such accounts; and a list or lists, specifying the nature or description of the fees so to be abolished, shall thereupon be published by and under the authority of the said Commissioners of her Majesty's Treasury in the *London Gazette*: provided that until such publication all fees that now are or may be legally received in respect of such subordinate offices or appointments, shall and may continue to be received as heretofore.

18. It shall and may be lawful for the said Commissioners of her Majesty's Treasury, and they are hereby empowered and required by

and with the sanction of the said Lord Chief Justices and the Lord Chief Baron, as soon as conveniently may be, to ascertain and fix the number of ushers, court-keepers, messengers, and other subordinate officers, and assistants in the said Superior Courts, and of attendants on the Judges (other than the Judges' clerks hereinbefore-mentioned), which shall be sufficient for the due performance of the duties required to be rendered in respect of such subordinate offices and appointments, and for the necessary attendance on the Judges; and a list or lists of the offices and appointments, when so fixed and ascertained, shall thereupon be published by and under the authority of the said Commissioners of her Majesty's Treasury in the *London Gazette*; and from and after such publication all such of the said offices and appointments as are not contained in such list or lists shall be and the same are hereby declared to be abolished.

19. It shall and may be lawful for the Lord Chief Justices and the Lord Chief Baron respectively for the several Courts to appoint fit and proper persons to perform the duties of the said several subordinate offices and appointments, when such offices and appointments shall have been fixed and ascertained in the manner hereinbefore provided: Provided always, that the persons who now perform the duties of such subordinate offices and appointments shall be re-appointed to such offices and appointments, if they should be found willing and competent to discharge the duties thereof, in preference to any person who shall not have performed such duties prior to the passing of this Act; and when and so often as any vacancy shall occur by death, resignation, or otherwise, in any such office or appointment, it shall and may be lawful for the Lord Chief Justice or Lord Chief Baron of the Court, in which such vacancy shall occur, to nominate and appoint some fit and proper person to fill such vacancy; and all persons to be appointed to such offices or appointments shall hold their respective offices during the pleasure of the Court to which they shall respectively belong.

20. If at any time after the passing of this Act it shall be found that the establishment of such subordinate officers, assistants, or attendants in any of the said Superior Courts is either excessive or insufficient for the due performance of the duties required to be rendered by such officers, assistants, or attendants, it shall and may be lawful for the Lord Chief Justice or Lord Chief Baron of the Court, in which any alteration with respect to such establishment may be deemed necessary, to notify the same in writing to the said Commissioners of her Majesty's Treasury, stating therein the circumstances which may have caused any increase or diminution of such establishment to be necessary; and thereupon the said Commissioners of her Majesty's Treasury may, and they are hereby authorised and required, from time to time by their warrant to increase or reduce such establishment, as the case may require; and, by and with the sanction of the said

Lord Chief Justice or Lord Chief Baron of the Court in which such alteration is deemed necessary, to make such provision for the carrying into effect such alteration, both with respect to regulating the salaries and otherwise, as may be thought proper.

21. It shall and may be lawful for the said Commissioners of her Majesty's Treasury, and they are hereby authorised and required, by and with the sanction of the Lord Chief Justices and Lord Chief Baron, to fix and appoint an annual sum to be paid by way of salary to such and every of such subordinate officers, assistants, and attendants, who shall be re-appointed or appointed under the provisions of this act; and such salaries, together with the necessary expenses (if any) of such offices and appointments, shall be payable and paid by equal quarterly payments on the 31st day of March, the 30th day of June, the 30th day of September, and the 31st day of December in every year, together with a proportional part of such annual sum for the time which at the decease of the person entitled thereto shall have elapsed since the last payment thereof; and such salaries and expenses shall be paid out of and charged and chargeable upon the said Consolidated Fund of the United Kingdom of Great Britain and Ireland: Provided always, that the officers, assistants, and attendants, the value of whose offices or amount of whose salaries or official incomes have been already fixed or ascertained under and by virtue of any Act or Acts of Parliament regulating or relating to their said offices or salaries, shall be entitled during the tenure of their office respectively to receive the amount of salary or official income now received by them, if such amount exceed the salary to be fixed by the Commissioners of her Majesty's Treasury as aforesaid under this Act; and in case such amount shall be less than the salary so fixed by the said Commissioners of her Majesty's Treasury, the same shall merge and be considered as part of and included in the said salary.

22. And whereas the hereditary Chief Proclamator in the Court of Common Pleas, and the hereditary Chief Usher in the Court of Exchequer, in right of their respective offices, are entitled to appoint certain officers in the said Courts of Common Pleas and Exchequer, who by themselves or their deputies perform the duties of their respective offices; and it is expedient that the said offices of hereditary Chief Proclamator and hereditary Chief Usher should be abolished; and that a fit and proper compensation should be awarded to George Henry Walker Heneage, Esq. (being the person who now holds these offices), upon the abolition thereof: Be it enacted, That it shall and may be lawful for the said Commissioners of her Majesty's Treasury, and they are hereby authorised to pay to the said George Henry Walker Heneage, Esq., during his life, and after his death to such person or persons as would have been entitled to hold such office, or either of them, upon satisfactory proof of his, her, or their being so entitled, such annual

sum as the Commissioners may find to be a fair and reasonable compensation for the loss of the said offices; and in estimating such compensation, the average annual amount of profit arising from the said offices respectively for the thirty years next preceding the passing of this Act shall be taken into consideration; and such annual sum shall be paid out of and charged and chargeable upon the said Consolidated Fund of Great Britain and Ireland.

23. Every person holding any office or appointment in the said Courts of Common Pleas or Exchequer under any grant, deed, or other appointment from the said hereditary Chief Proclamator, or hereditary Chief Usher, and every other subordinate officer, assistant, or attendant, whose office shall be abolished under the provisions of this Act, and who shall not be re-appointed to any office in any of the said Superior Courts, shall be entitled to receive such a sum in gross, or such an annual sum, as the said Commissioners of her Majesty's Treasury may fix and appoint, as a fair and reasonable compensation for the loss of any such office or appointment; and such sums by way of compensation shall be paid out of and charged and chargeable upon the said Consolidated Fund of Great Britain and Ireland; and the said Commissioners of her Majesty's Treasury are hereby authorised and required to fix the amount of such sums to be paid by way of compensation, and to pay the same to the said persons whose offices shall have been abolished under this Act.

24. That nothing herein contained shall affect the rights of the existing four patent messengers of the said Court of Exchequer, but there shall be paid to each of the present messengers of the said Court, during their respective lives, the amount of the annual salaries or allowances, to which they are now respectively entitled.

25. All appointments of officers and clerks to be made by virtue of this Act shall be so made without any pecuniary or other consideration whatsoever, directly or indirectly, to be paid or received for the same; and all such officers and clerks shall execute their duties in person, and shall give their attendance in Court or elsewhere, and shall conduct the business of their several departments or offices at such places and hours, whether in Term time or Vacation, and in every respect in such manner as the Lord Chief Justices or the Lord Chief Baron, and the other Justices and Barons of the said Courts respectively shall from time to time order and direct.

26. If any officer of the said Courts, or any clerk appointed or to be appointed under or by virtue of this Act, or any person whatever employed in the offices of the said Courts, shall, for anything done or pretended to be done relating to his office or employment, or under colour of doing anything relating to his office or employment, or for forbearing to do any act properly appertaining to his said office, demand, take, receive, or accept, or allow any person whatsoever to take for him, or on his

account, or for or on account of or in trust for him or any other person named by him, any gratuity, perquisite, or reward, or anything of value, other than the salary or remuneration allowed or to be allowed to every such officer, clerk, or person aforesaid, he shall forfeit a sum of 50*l.*, to be recovered by action of debt at the suit of her Majesty's Attorney-General, and upon judgment being recovered therein he shall be incapable of any longer holding his office or employment.

27. In the event of any reduction being hereafter made in the number of the officers or clerks created or authorised by this Act, the Lord Chief Justices, Lord Chief Baron, Justices, Barons, and Associates of the said Courts respectively for the time being, shall not be entitled to compensation for the loss of any right of appointment vested in them or any of them by virtue of this Act.

28. And whereas upon the Circuits of the Judges of Assize and Gaol Delivery, a fee of 6*s.* 8*d.* is now paid on every cause to the Marshals of the Judges of Assize for the use of the Judge: Be it enacted, That the said fee, and all other payments upon the Circuits to or to the use of the said Judges, shall be and they are hereby abolished.

29. The said Commissioners of her Majesty's Treasury shall cause to be laid before Parliament, within 14 days of its first meeting in every year, an account, made up to the 31st day of December previous, both with respect to the said offices, and with respect to all other offices in the Superior Courts of Law, of all charges on the Consolidated Fund, by way of compensation or otherwise, and of the gross and net receipts of fees in each of the said offices, and of all charges and disbursements deducted therefrom, and of all amounts fixed by way of remuneration for any of the holders of the said offices respectively, and of any salaries fixed under the powers of this Act, and of all salaries charged on the said fees during the year then last elapsed, and after the first such account shall have been presented, then during the two years last elapsed, with a statement of the increase or decrease of any of the said items of account in the second of such years as compared with the first.

30. Where it shall be made to appear to the said Commissioners that any of the hereinbefore mentioned officers omits to perform the duties of his office in person, the said Commissioners, unless it shall be shown to their satisfaction that such omission arises from temporary and unavoidable causes, and they shall in writing approve of such omission for a period not exceeding at any one time six months, shall, as the case may be, require the whole of the fees due to or received by such officer for his own use during the time of such omission to be accounted for and paid over as aforesaid, or shall cease to allow or pay any salary otherwise due to such officer during the time of such omission.

31. The fees heretofore received on the Circuit by the Marshal's man and the Judge's

bailliff respectively shall be and are hereby abolished; and no fee, gratuity, or reward whatsoever shall be demanded or accepted by any one exercising or claiming to exercise either of the said offices, or by any servant or other person attending the Circuit in any subordinate office or employment.

32. And whereas, by reason of abolishing the office of hereditary Chief Usher of the Court of Exchequer, and the officers of the said Court appointed by that officer, it becomes necessary to make provision for the duties hitherto performed by the said hereditary Chief Usher and persons, styled "Messengers of the Court of Exchequer," holding offices or places in the patronage of and appointed by the said hereditary Chief Usher: The duties hitherto performed by the said hereditary Chief Usher and Messengers of the Court of Exchequer, so far as regards the process issued and issuing from the office of her Majesty's Remembrancer in the Court of Exchequer, and of the Treasurer of the Governors of the Bounty of Queen Anne, on the Seal Day next after each and every Term, shall from and after the abolition of the said offices of Messengers of the Court of Exchequer, be discharged by her said Majesty's Remembrancer, and his officers under his direction, and the officers of the said Treasurers of the Governors of the Bounty of Queen Anne, and shall be in all respects as valid and effectual to all intents and purposes as if performed by the said hereditary Chief Usher and Messengers of the Court of Exchequer as heretofore, any law or usage to the contrary notwithstanding; and that it shall not be necessary in future for the process hereinbefore referred to to be sealed before or in the presence of the Cursitor Baron of the said Court of Exchequer on the said Seal Days as heretofore, but the same may be issued from the office of her said Majesty's Remembrancer and the office of the Treasurer of the Governors of the Bounty of Queen Anne, and be respectively sealed in the office of her said Majesty's Remembrancer, who has the custody or keeping of the Great Seal of the Exchequer.

#### SCHEDULE (A.)

*Officers and Clerks of the Judges in the Superior Courts re-appointed by this Act.*

Associate in the Court of Queen's Bench.  
Associate in the Court of Common Pleas.  
Associate in the Court of Exchequer.

#### SCHEDULE (B.)

*Officers and Clerks who are to be paid by Salaries instead of Fees.*

The Associates in the Queen's Bench, Common Pleas, and Exchequer.

Senior Clerk in the Offices of the Associates in the Queen's Bench, Common Pleas, and Exchequer.

Junior Clerks in those Offices.

Clerk of Assize for the performance of the duties of Associate on the Northern Circuit.

Clerk of Assize for the performance of the duties of Associate on the Western Circuit.

Clerk of Assize for the performance of the duties of Associate on the Oxford Circuit.

Clerk of Assize for the performance of the duties of Associate on the Midland Circuit.

Clerk of Assize for the performance of the duties of Associate on the Home Circuit.

Clerk of Assize for the performance of the duties of Associate on the Norfolk Circuit.

Clerk of Assize for the performance of the duties of Associate on the North Wales Circuit.

Clerk of Assize for the performance of the duties of Associate on the South Wales Circuit.

#### *Judges, Clerks.*

Principal Clerks of the Lord Chief Justices of the Queen's Bench and Common Pleas, and Lord Chief Baron of the Exchequer.

Chamber Clerks to the same.

Third Clerks to the same.

Principal Clerks to the other Judges and Barons.

Chamber Clerks to the same.

#### SCHEDULE (C.)

Associates in the Courts of Queen's Bench, Common Pleas, and Exchequer.

Marshals on the Circuits.

Clerks of Assize as Associates.

Judges Clerks.

### PROPOSED ASSIMILATION OF THE MERCANTILE LAW IN ENGLAND AND SCOTLAND.

THE London Committee of Merchants and others, associated for the improvement of the Commercial and Bankruptcy Laws of Scotland and the assimilation of those Laws in England and Scotland, have made an able "Report and Suggestions addressed to the Mercantile Community of the United Kingdom,"<sup>1</sup> comprising a statement of the existing grievances and the proposed remedies. The following are the topics to which they particularly call attention:—

"1. The losses and hardships suffered by Scotch and English houses, creditors in Scotch sequestrations, resulting from the defects in the Scotch Bankrupt Act, 2 & 3 Vict. c. 41, and from the abuses which have grown up under the operation of that statute.

"2. The assimilation of the jurisdiction and the Law of Procedure in the Bankruptcy and County Courts of England and Scotland, as a great step towards an assimilation of the Bankruptcy and Commercial Laws of the two countries.

"3. The defects in our commercial treaties with foreign countries, and the losses thence

<sup>1</sup> Published by Longman and Co., and A. and C. Black.

arising by the escape of fraudulent bankrupts and other pecuniary defaulters, from England and Scotland, carrying with them the property of their creditors to foreign countries.

"4. The differences of the Law of England and Scotland, in the contract of the sale of goods, and the obstacles in the way of recovering debts.

"5. The inconveniences and risks to which the mercantile community are subjected, by the fiscal regulation, which renders cheques or drafts on bankers illegal, if drawn at a distance beyond 15 miles from the banker's place of business."

The defects and evils of the Scottish system are thus detailed :—

"(1.) The trustee, who is sole assignee, is elected by a majority of votes of the creditors, which gives rise in Scotland, as it did formerly in England, to all sorts of improper scheming and of arrangements between the trustees, the solicitor, and the bankrupt, greatly to the prejudice of the creditors.

"(2.) By a provision in the Scotch Bankrupt Act, the creditors are necessarily prevented from receiving payment of their dividends for a period of eight months, although the assets may be, and sometimes are realised, within eight weeks after the date of sequestration. This most unnecessary delay can be justified on no principle, and is a grievous hardship upon the creditors. Indeed, the consequence of it is sometimes ruinous to individuals; for cases can be pointed out where creditors, who were quite equal to discharge their own obligations, have been compelled to suspend payment, for no other reason than that they were unable, within a reasonable time, to realise dividends from Scotch bankrupt estates, on which they were themselves heavy creditors.

"(3.) Another palpable cause of loss to the creditors in Scotch bankruptcies, is the delay created by contests for trusteeships. These are sometimes litigated for years, and several cases have been brought before the Committee, where the rival candidates carried their competition to the House of Lords. While these contests are going forward, the winding up of the estate remains in abeyance; the creditors, who have no interest whatever in the success of any particular candidate, must stand by and see the estate exposed to every prejudicial contingency; the stock deteriorates in value by awaiting the result of the contests,—the season for which it was manufactured passes away,—the articles go out of fashion,—markets fall,—and thus the fund for division is diminished to a disastrous extent. In one case brought before the Committee the estate was found to be diminished one-fourth in value, through the delay created by competitions for the office of trustee. In another, after a careful valuation, the estate showed a dividend of 10s. in the pound, at the date of the sequestration; but the trusteeship was contested,—the usual delays took place before the contest was decided; in the meanwhile, the stock was not only deteriorated, but

the class of goods of which it was composed fell greatly in the market; and the result was that this unfortunate estate, instead of paying 10s., yielded only 1s. 10d. in the pound to the creditors.

"Another serious grievance which arises out of these competitions is this; the bankrupt is often prepared to offer a composition, with which and the security offered, the creditors would be satisfied; but no such offer can be accepted pending the contest for the trusteeship. During the period the bankrupt's business is suspended, and the premises are shut up. Besides the deterioration of the stock and the contingencies to which outstanding debts are liable, the business connexion, which is always an important consideration in the composition contract, is destroyed. Two disastrous consequences necessarily follow this state of things. On the one hand, the bankrupt is prevented from carrying through a settlement with his creditors, and from being reinstated in business within a reasonable period; whilst, on the other, the creditors are deprived of the possibility of obtaining, under similar circumstances of advantage, a dividend in the shape of a composition.

"(4.) Besides these crying evils, there are several of a minor character in the Scottish system of bankruptcy, which diminish the amount of dividend to the *bond fide* creditor.

"For instance,—the bankrupt is allowed under the statute to retain possession of his whole estate, books, and vouchers, for a fortnight after the date of his sequestration, until the meeting for the election of the *interim factor*. Two serious evils are found to result from this; first, it assists the bankrupt in having his own nominee appointed trustee, and so virtually enables him to become the assignee on his own estate; and secondly, it enables dishonest bankrupts to give unfair preferences, and to pillage the estate. Another evil which operates seriously to the prejudice of a dividend in a Scotch sequestration is, that the Scotch Bankrupt Law does not permit the examination of a creditor upon his claim of debt; and the consequence is, that fraudulent bankrupts and their friends are enabled to create fictitious claims against estates, in order to obtain a majority of votes for carrying the trusteeship in favour of their own nominees, and afterwards, by means of such claims, to carry off in the shape of dividends the property of just and lawful creditors. To crown all, as if the Scotch Bankrupt Act had been framed to enable fraudulent bankrupts to defraud their *bond fide* creditors, those very trustees, however corruptly elected, and however unfit for the office, are actually invested with the judicial power of an English Commissioner in Bankruptcy, of adjudicating upon the claims of the creditors."

With regard to the *Remedies* our readers will be a little surprised to find, that whilst the reformers here are so little satisfied with the working of the Bankruptcy Laws in England, that they propose (as we showed



recently) to transfer their administration from the present Commissioners to the Judges of the County Courts, the London merchants, as well as those of Scotland, earnestly recommend the English system to be adopted in Scotland. The Committee state that they cannot better express their own opinion upon this important subject, and their own views of what are the most effectual remedies, than by quoting from the statement of Mr. Slater who has had almost daily experience for the last 30 years of the working of both the English and Scottish systems of Bankruptcy.

The plan approved by that gentleman is thus described:—

“A Court of Bankruptcy and Insolvency, which shall determine in open Court the validity of all claims on the estate, and conduct in public the bankrupt's examination, with power to assign rewards for the recovery of concealed property, and to inflict punishment for its concealment,—to grant or withhold the bankrupt's discharge,—to grant class certificates indicative of the bankrupt's conduct,—and to make an allowance to the bankrupt of a per-centage on the assets, graduated according to the dividend which the estate shall yield.

“The Court to have original jurisdiction in all matters in bankruptcy and insolvency, including the awarding of sequestration, fraudulent alienations and preferences to the prejudice of creditors,—embracing also judicial control in private settlements and matters of arrangement in commercial failures, and in trust deeds for the benefit of creditors.

“The Court to consist of a Chief Commissioner and two other Commissioners; one of whom to reside in Edinburgh and another in Glasgow, the third to go circuit; and the sheriff-substitutes of the more remote counties to act as Commissioners in Bankruptcy, with the same powers as the other Commissioners.

“The Court of Appeal to consist of the Chief Commissioner and the other two Commissioners, and to sit alternately in Edinburgh and Glasgow.

“All proceedings, whether before the Commissioners or the Court of Appeal, to be conducted by *vidæ voce* examination of witnesses, unless the Court think it expedient, under special circumstances, to receive testimony by affidavit; and no written pleadings whatever to be allowed.

“Official Assignees,—alike independent of the bankrupt and the creditors, in whom the estate shall be vested at the date of the sequestration.

“A Trade Assignee,—one or more trade assignees in each sequestration from among the creditors, who, without remuneration, shall assist the official assignee with his advice as to the collection and division of assets, the concealment and recovery of property, or other matters of interest to the creditors.

“Free access by creditors to the statement of affairs and books of the bankrupt, and the principle of taxation of all costs in realising the estate.”

The reasons in support of the plan are clearly and forcibly given, and Mr. Slater, contrasting the Scotch with the English system, thus gives the preference to ours:—

“Under the English system, the official assignee takes instant possession. The trade's assignee is chosen as a meeting of the creditors held in open Court: and no meeting of creditors is afterwards necessary, where the mere circumstance of number and value can have the slightest influence in the legal administration of the affairs of the bankrupt; yet it is open to any one creditor, at any time before a final dividend is declared, to call a meeting in public Court, with the consent of the Judge, for any special purpose affecting the estate. The bankrupt is examined in public,—the creditors are examined in public,—the assignee's accounts are audited in public; and no question can arise, which the functions of the official assignee and the trade's assignee, under the immediate and constant surveillance of the Court of Bankruptcy, as a moral and judicial tribunal, are not competent to deal with promptly, stringently, publicly, and satisfactorily.”

He also animadverts on the obstacles in the way of recovering debts both in England and Scotland on judgments and decrees in the respective countries:—

“It is a great public scandal that a mercantile house should not be able to recover just debts, under one judgment throughout her Majesty's dominions. But it is more grievous still, after having obtained a judgment from her Majesty's Judges either in England or Scotland, to find that if the debtor cross the Tweed, the creditor is compelled not only to commence proceedings *de novo*, but actually to find security for payment of his debtor's costs. The annual amount of money lost by English and Scotch creditors, in consequence of this obstacle in the way of executing judgments for debt, is known to be very large indeed, and the existence of it impedes trade. There is no good reason why a judgment of the Court of Queen's Bench, should not be declared effectual throughout Scotland by registration in the general Register House at Edinburgh; nor why a decree in the Court of Session in Scotland, should not be equally effectual throughout England by registration in any one of the English Courts of Common Law; nor why judgments by the County Court Judges of England and Scotland should not by the like registration be of full force in either country.”

These statements and suggestions carry conviction with them, and have our hearty concurrence.

## NOTICES OF NEW BOOKS.

*How to Enfranchise your Copyhold, under the Copyhold Acts of 1841 and 1852.* By JAMES STEWART, Esq., Barrister, and Secretary of the Copyhold Commission. Second Edition. London: Stevens & Norton. 1852. Pp. 48.

MR. STEWART'S official knowledge and experience as Secretary to the Copyhold Commissioners, render this concise summary of the effect of the former Copyhold Acts, as well as the last, of great value both to the Public and the Profession; and he has bestowed his accustomed skill and learning in the composition of the work. The two great objects of the Act of 1852, he states, are,—1st, to call into effective operation the preceding Acts; and 2nd, the introduction of the compulsory principle.

The effect of the Acts 4 & 5 Vict. c. 35, 6 & 7 Vict. c. 23, and 7 & 8 Vict. c. 55, are stated under the respective heads of *Commutation* and *Enfranchisement*. And various miscellaneous points of Law and Practice under those Acts are noticed.

The last Act, 15 & 16 Vict. c. 51, is thus treated of:—1. How enfranchisement may be compelled. 2. Proceedings in enfranchisement. 3. The consideration for enfranchisement. 4. Enfranchisement questions may be decided by the Commissioners. 5. Further proceedings in enfranchisement. 6. How the land may be charged. 7. Compensation and fees to Steward. 8. Title of Lord on enfranchisement. 9. Purchase of copyhold by Lord. 10. Expenses of proceedings under the Act. 11. Effect of award on deed. 12. Sale of, and other matters as to rent-charge. 13. Miscellaneous points.

The work also comprises the terms for enfranchisement and forms, with the Act *verbatim*.

Mr. Rouse's Copyhold Manual shall be noticed, if possible, in our next Number. It comprises upwards of 50 useful Forms, with valuable suggestions to Lords, Stewards, and Tenants, and Rules and Tables for valuing the Lords' different rights, &c.

## THE BAR AND THE ATTORNEYS.

MR. RANN KENNEDY'S SPEECH AT BIRMINGHAM.

FOR want of space, we are obliged to defer our further notice of this extraordinary Pamphlet. In the mean time it is but right to say,

that Mr. Rann Kennedy's statements and opinions must not be taken as those of the Bar generally, nor even of any large section of it. In truth, he appears to "stand alone in his glory" in this onslaught. He says, "it would have been vain to appeal to the Bar."—"He tried them two years ago."—He published a pamphlet, "exposing the childish absurdity of their Circuit Clubs, and showing how a multitude were held in bondage for the benefit of a few," but the appeal, he admits, had no effect, "it could not rouse the Bar from their lethargy;" and he adds, "I am not sorry now. I might perhaps have joined a Circuit Club, and been a slave like others." That is, we suppose, he would have been bound by the general rule of the Bar, not to take instructions except from the attorneys.

## METROPOLITAN AND PROVINCIAL LAW ASSOCIATION.

A MEETING of solicitors was held in the Town Hall, in Derby, on the 13th inst., convened by the Metropolitan and Provincial Law Association, "for the purpose of taking into consideration the present position and prospects, and devising the best means of obtaining increased support for, and thus giving increased efficiency to, the Association."

Mr. Wm. Henry Palmer, Chairman of the Association, presided. The gentlemen who were present, attended from the following places:—

*Ashby-de-la-Zouch*: Mr. Brown. *Belper*: Mr. Ingle and Mr. Wm. Ingle. *Birmingham*: Mr. Ryland. *Birstal*: Mr. Firth. *Burton-on-Trent*: Mr. Bass, Mr. Drewry, and Mr. Brooks. *Carlisle*: Mr. Nanson. *Castle Donington*: Mr. John Towle. *Chesterfield*: Mr. Busby. *Derby*: Mr. W. E. Mousley, Mr. Barber, Mr. J. Moss, Mr. Mozley, Mr. Kahrs, Mr. Gadsby, Mr. C. B. Portmore, Mr. J. Huish, and Mr. F. Baker. *Hull*: Mr. Thompson, Mr. Moss, and Mr. Shackles. *Leeds*: Mr. Barr, Mr. Bulmer, Mr. Eddison, Mr. Shaw, Mr. Sangster, and Mr. Webster. *Lichfield*: Mr. Birch and Mr. Dyott, jun. *Lincoln*: Mr. Carlyon and Mr. Bromhead. *Liverpool*: Mr. Avison. *London*: Mr. W. H. Palmer, Mr. C. J. Palmer, Mr. E. S. Bailey, Mr. E. W. Field, Mr. J. Beaumont, and Mr. W. Shaen. *Maidstone*: Mr. Case. *Manchester*: Mr. J. Street and Mr. W. H. Partington. *Newcastle*: Mr. Glynn and Mr. Wm. Chater. *Nottingham*: Mr. Richard Enfield. *Stoke*: Mr. Keary.

1. It was moved by Mr. W. Eaton Mousley, and seconded by Mr. Glynn—"That with a view to promote the welfare of the Legal Profession, and to assist its members to discharge their duties to their clients and to the public, it is highly expedient that the practising attor-

neys and solicitors of England and Wales should be united in an association."

2. It was moved by Mr. *James Beaumont*, and seconded by Mr. *Ryland*—"That the objects of such an association should be to assist all well-considered plans for improving the law, especially as relating to the practice of the Courts, and to maintain an honourable position and character for the Profession."

3. It was moved by Mr. *John Hope Shaw*, and seconded by Mr. *E. W. Field*—"That the Metropolitan and Provincial Law Association having been founded in 1847, and conducted from that time upon the principles expressed in the foregoing resolution, deserves the cordial support of every member of the Profession, and this meeting accordingly pledges itself actively to endeavour to increase its power and usefulness by procuring a large accession to its number of members."

We are unable in the present Number to find space for all the speeches delivered at the meeting. We select therefore those of Mr. *Palmer*, the Chairman of the Association,—of Mr. *Hope Shaw*, the mayor of Leeds,—Mr. *Eaton Mousley*, of Derby,—and Mr. *Glynn*, of Newcastle; and shall next week give the speeches of Mr. *Edwin Field* and Mr. *James Beaumont*, members of the London Committee,—of Mr. *Ryland*, of Birmingham,—Mr. *Moss*, of Hull, and Mr. *Mozley*, of Derby.<sup>1</sup>

The *Chairman*, in opening the business of the meeting, expressed the gratification he experienced on seeing so influential an assemblage of gentlemen from all parts of the kingdom,—a fact which rendered the meeting one of considerable importance. The circular which had been addressed to the Profession generally would explain the object of the meeting: it was, in short, to obtain a complete unity in the Profession, by calling upon them to join the Metropolitan and Provincial Law Society, which includes in its membership gentlemen from all parts of the kingdom. Without going over the list of all the Association has accomplished since its formation, he might state generally that constant attention has been paid by the Committee to every bill introduced into Parliament, and to every proposal for an alteration of the laws; and no less than 267 petitions were obtained by the Committee upon the Certificate Duty alone. On all matters interesting to the Profession, this Association was one through whom their own interests, and the interests of the public at large, can be provided for. The attorneys and solicitors were a large body, comprising about 10,000 individuals, and if united they might be very powerful; but unfortunately it had always been said that no body in the country is so disunited as the solicitors. It was high time they united for their own protection as well as the protection of the public—because in protecting themselves they protected the public from falling into the hands of an un-

educated and low class of persons who would be a bane to society. Perhaps it would be said that, the Association was designed to protect their own interests and nothing more. But it was not so; on the contrary, he felt assured that their objects only required to be better understood to be thoroughly appreciated by the public, and he trusted every gentleman present had come prepared to give to them their earnest co-operation and support.

Mr. *J. H. Shaw* said,—The resolution he had to move had been unexpectedly put into his hands when entering the room, but he had no hesitation to undertake the duty assigned to him. It had been intimated that the speakers at this meeting were not expected to enter upon the discussion of particular measures, but only of the general condition and prospects of the Society. Within those limits he meant strictly to confine himself, thinking that the discussion of particular measures was best suited to a Committee in which the Society had confidence, and he felt that his duty, so limited, was a very easy one. His conviction of the usefulness of the Institution had not only remained undiminished, but had been constantly increasing in strength. It only required that attorneys should use rightly those elements of strength which they possessed, in order to effect all that was proper or desirable. Unfortunately, however, from apathy or disunion, or both, they had become one of the weakest bodies in the country. It was true that most of the large towns had their own local associations, but for want of union with others, their efforts, however useful in their own immediate neighbourhood, were powerless for good as regarded the general interests of the Profession. It was for the purpose of cementing an union of the Profession that the Metropolitan and Provincial Association was instituted, and every reader of their reports must know that by the unostentatious labours of the Central Committee—labours that he hoped would be better known and appreciated hereafter—the Society had already contributed greatly to the protection and honour of the Profession and to the public advantage. He did not, in saying this, mean to underrate the great value of the Incorporated Law Society, of which he was a member, and which had for several years been acting with a degree of energy, as well as judgment, that amply entitled it to the respect and confidence of the Profession. But, though equally open to all, it must practically, from the nature of its constitution, consist chiefly of metropolitan, with comparatively few provincial solicitors, while the Metropolitan and Provincial Society was designed and calculated for the purpose of uniting the professional men of London with their brethren in the provinces. Both institutions had always co-operated with perfect cordiality, and many gentlemen present, as well as himself, were supporters of both; but he recommended the one whose claims they were now met to support as that through which the Profession at large would best be

<sup>1</sup> We are indebted for the greater part of this Report to *The Derby and Chesterfield Reporter*.

united. He admitted—and why should there be any reluctance to avow it?—that a due and adequate remuneration for those important services which the Profession rendered (a condition absolutely necessary in order to retain in the body men of character and respectability), was one object, and a perfectly fair one, which they had associated to secure. So far from that being a disadvantage to the public, he (Mr. Shaw) maintained that, within proper limits, it was an advantage; for undoubtedly the public were interested in maintaining the position of a body of men, in whom, from the nature of things, they had to repose great confidence. But it was, in his opinion, an object of far greater importance to effect that which was another, and by far their principal aim, viz., to vindicate the honour and character of the Profession; and he hoped they would all unite in resisting to the uttermost every attempt to degrade it. It was with that view more particularly that the Association was formed. In its first prospectus, that subject was put prominently forward, and unless their attention was perseveringly and resolutely directed to the maintenance of their own character and honour as a Profession, the time would assuredly arrive when they would sink into the position described in a recent pamphlet.\* Now, in what way could they best accomplish this object? One means would be more frequent communications between the committee and members by a more frequent issue of the circulars. Those circulars they had been told were read with great interest and he only regretted that their visits were so few and far between. He was aware that the issue was a work of considerable labour and attended with some expense, and that an augmentation of the funds was necessary in order to secure that object. By increasing the number of members a corresponding increase would take place in the funds of the Society, and thus would they secure a more frequent issue of those valuable circulars. That was one important point. Another and still more important point was, that in this country almost everything was done by public opinion, and he could not entertain a doubt that the absurd, but systematically instilled prejudices that prevailed with reference to their Profession was another great cause why they did not at present possess the fair influence which, not only their own interests, but the public good required. More frequent communication with the public through the medium of the press was therefore necessary to give effect to their efforts. It was not, however, by an occasional article on a particular question, but by continuous persevering efforts from quarter to quarter, from month to month, and from week to week, that useful impressions on public opinion were made, and he hoped they would for this purpose avail themselves much more frequently than they had hitherto done of the channels that were

open to them. He referred to channels already open, because, though he thought they ought not to hesitate a moment about creating new channels for themselves if existing ones were found unsuitable or inadequate, he believed that publications already established, and now perfectly accessible, might be made to answer every purpose they wished for. But this object also required expense, and therefore, in order to accomplish it, an extension of members was required,—that effected, the committee would be enabled to act in every way upon a much larger scale. He would only add, that, on all these grounds, while acknowledging and rejoicing at the great good the Society had done, he was sure it would be able to affect a great deal more by extended numbers, funds, and efforts.

Mr. W. Eaton Mousley, rose and stated that he had not the least expectation that he should be called upon to take any part in the proceedings of the meeting until after he had entered that hall, and he much regretted that the resolution he held in his hand had not been intrusted to some one more competent to address the meeting upon the subject of it than himself; but approving as he did the object of the meeting, and the benefit which he apprehended would result from extending the Society, he should state simply and shortly his views upon the question, and if he were wrong in the opinions he entertained, he should be happy to have them corrected by any other gentleman. It would be right to observe, that there were two Law Societies existing—one the Incorporated Law Society, of which he had long been a humble member, and whose rules and regulations were prescribed by its charter, and to which the Judges of the land had paid much respect, and from which much benefit to the Profession and the public had been derived; the other was the Metropolitan and Provincial Law Association, the extension of which, he apprehended, was the immediate object of the meeting that day, and stated that he believed it would be the means of bringing the Profession more in unison together, and of correcting abuses, so far as regards unnecessary and expensive forms in legal proceedings, and be the means of protecting the more humble practitioners. There had been an assumption of power by the junior members of the Bar which they had no right to assume, and although it had been said by some of them, that a practising attorney and solicitor fell short of the information possessed by the barrister, he begged to dissent from that opinion. It ought to be recollected that some of the most learned and influential Judges who had ever sat upon the Bench, were men who had been brought up as attorneys and solicitors. The instances were numerous, but he would only advert to modern times. Lord Maclefeld, Lord Kenyon, Lord Giffard, Lord Chancellor Truro, Lord Chief Justice Tindal, and others; and he would ask whether the working up of principles as regarded both law and equity, from day to day at an attorney's table, was not much more bene-

\* The pamphlet referred to was, we understand, that of Mr. C. Rann Kennedy.

ficial in point of legal education than an individual eating a number of dinners, as his qualification, at one of the Inns of Court. He was of opinion that attorneys and solicitors were unfairly dealt with. A considerable sum of money was expended in their education, articles, stamp duties, and admissions, and yet the government had thought fit to tax these gentlemen with a Certificate Duty of 8*l.* or 12*l.* a-year, according to the residence of the party. Was there any principle involved in such a proceeding? Would it not be quite as just to tax annually the physician, the surgeon, or the apothecary, whose expenses in education were not so great, and whose incomes, generally speaking, were quite as liberal? This tax bore hardly upon the junior practitioner, but it was said by some that this tax kept a low class of society from exercising their Profession. He thought otherwise, and that the man who had incurred the expense of his premium, the duty upon his articles, and the duty of his admission, by some means or other, raised the money to pay his certificate duty, and it became right in every man not to oppress or degrade his inferior brethren, but on the contrary, to hold him up and give him all the protection and encouragement in his power. In his opinion, notwithstanding the large sweeping reforms both in Law and Equity, there were still other reforms which required to be carried out. Those reforms were the payment of fees to

persons who held useless places, and which taxed the suitor unfairly, and could not be of the least possible benefit to any other portion of the community. He was of opinion that the extension of the Metropolitan Provincial Law Society would not only be beneficial to the Profession, but to the suitor and the public at large.

Mr. Glynn, of Newcastle, cordially concurred with what had fallen from Mr. Moulsley, and could state that the Profession at Newcastle heartily sympathised with the object of the meeting, and were prepared to do their utmost to advance it. In conclusion, he could not allow the opportunity to pass without acknowledging the courtesy and attention they had received from their professional brethren in Derby.

## MEETING OF THE NEW PARLIAMENT.

At the meeting on the 16th October, it was ordered by her Majesty in Council, that the Right Hon. the Lord High Chancellor of that part of the United Kingdom called Great Britain, do issue writs for further proroguing Parliament, from Thursday the 21st day of October instant, to *Thursday*, the 4th day of November, for the despatch of business.

## RECENT DECISIONS IN THE SUPERIOR COURTS, AND SHORT NOTES OF CASES.

### Lord Chancellor.

*Abbott v. Swooder.* July 23, 24, 1852.

**SPECIFIC PERFORMANCE OF CONTRACT.—PURCHASE OF FARM.—UNDERVALUE OF ESTATE.**

*The defendant applied for the particulars of a farm which was advertised for sale, and subsequently entered into a contract for its purchase, and after having seen the estate. He also agreed with the tenant to take possession, and purchase the stock at a valuation. It appeared that the rent paid by the tenant was more than the land was worth: Held, dismissing with costs an appeal from the Vice-Chancellor Knight Bruce, that as the charges made by the defendant of misrepresentation and collusion with the tenant were not sustained by the evidence, the plaintiff was entitled to a specific performance of the contract, notwithstanding the price agreed on might be somewhat above the value of the land.*

THIS was an appeal from Vice-Chancellor Knight Bruce. The defendant had upon seeing an advertisement in the newspapers, of a farm belonging to the plaintiff to be sold in Carmarthenshire, applied to the plaintiff for particulars, from which it appeared the farm was let on lease, at 15*s.* per acre to a Mr. Ford.

The defendant, after examining the estate, entered into an agreement in October, 1847, for the purchase of the farm for 5,000*l.*, and also agreed with the tenant to take possession and purchase the stock at a valuation. The plaintiff had filed this bill for a specific performance of the contract, upon the defendant refusing to complete the purchase, on the ground of misrepresentation, amounting to fraud and the actual undervalue of the property, and alleged collusion between the plaintiff and his tenant as to the amount of rent paid. The Vice-Chancellor having decreed specific performance, this appeal was presented.

*Bethell, Malins, and W. Hislop Clarke*, in support; *J. Russell and Hardy*, contra.

The Lord Chancellor said, that previous to the contract, the plaintiff and defendant were wholly unknown to each other, and there had been no inducement on the part of the vendor to induce the defendant to purchase. He had been attracted by the advertisement, and had applied for the particulars, which had been printed for general distribution. No fraud had therefore been proved in the matter, and it appeared that the tenant himself had been deceived as to the value of the farm, and it was too late now for the defendant upon finding he had made a bad bargain, to seek to get rid of the contract. The appeal would be dismissed with costs.

**Lords Justices.***Frisby v. Stafford.* August 2, 1852.**ADMINISTRATION SUIT.—BREACH OF TRUST BY EXECUTRIX.—ADMISSION OF ASSETS BY EXECUTORS.**

*It appeared that the sole executrix and tenant for life of a testator had committed a breach of trust by the sale of certain stock to which the plaintiff was entitled in remainder, and that she died before decree in the suit instituted by him for the administration of the testator's estate. In the revived suit against her executors they admitted assets: Held, dismissing with costs an appeal from the Master of the Rolls, that they were personally liable to the amount of the stock so sold out by their testatrix, and the accumulated dividends since her death.*

THIS was an appeal from the decision of the Master of the Rolls (reported 14 Beav. 319). It appeared that the testator, Edward Manners, by his will, dated in 1801, gave the whole of his personal estate to Ann Stafford, whom he appointed his sole executrix, for life, and after her death among his 10 children. The testator died in February, 1811, and his will was duly proved by Mrs. Stafford. This suit was instituted in November, 1815, against Mrs. Stafford, by one of the children and residuary legatees, to have the accounts taken, but she died in 1827, appointing the defendants, Mr. Edward Manners and Mr. Roger Manners, her executors, against whom the suit was revived, and it was referred to the Master to take the account of the moneys come to the hands of the executrix during her lifetime, and of her executors since her death, and ordered that what had come to her hands should be answered by the executors, they having admitted assets for that purpose. It appeared that Mrs. Stafford had committed a breach of trust, and sold out the plaintiff's share of certain stock amounting to 5,400*l.* The Master of the Rolls having held that the executors, by admitting assets, were personally liable to the amount of the accumulated dividends since the death of the testatrix, this appeal was presented.

*Craig and Goodeve* in support; *R. Palmer and Renshaw*, contra, were not called on.

The *Lords Justices* said, that the executors of an executrix, by admitting assets, had rendered themselves personally liable to whatever decree the executrix would, if living, have been liable to, and that they were therefore answerable for the dividends which would have been received if no breach of trust had been committed. The appeal was accordingly dismissed with costs.

**Vice-Chancellor Parker.***Esparie Perpetual Curate of Scropton.* August 3, 1852.**PERPETUAL CURACY.—ERECTION OF PARSONAGE WITH PURCHASE-MONEY OF LAND TAKEN BY RAILWAY COMPANY.**

*Held, that the Court has not power, under the 1 & 2 Vict. c. 23, ss. 7, 9, to direct that the purchase-money of lands belonging to a perpetual curacy, taken by a railway company, should be applied in the erection of a parsonage house.*

CERTAIN land, belonging to this curacy, and consisting of part of the garden and adjoining close, had been sold to the North Staffordshire Railway Company for the purposes of their line, and this petition was now presented for such purchase-money to be laid out in building a parsonage house.

By the 1 & 2 Vict. c. 23, s. 7, it is enacted, that "where the residence house, gardens, orchard, and appurtenances belonging to any benefice, shall be inconveniently situate, or for other good and sufficient reasons, it shall be thought advisable to sell and dispose thereof, it shall and may be lawful for the incumbent of such benefice, and he is hereby authorised and empowered, with the consent and approbation of the ordinary and patron thereof, and of the archbishop of the province, to be signified by their executing the deed of conveyance hereby authorised to be made, absolutely to sell and dispose of such house, gardens, orchard, and appurtenances, any or either of them, with any land contiguous thereto not exceeding 12 acres;" and by sect. 9, "the moneys to arise from such sale or sales shall, after payment of all costs, charges, and expenses of such sale or sales, be applied and disposed of by the said governors in or towards the erection or purchase of some other house and offices, or the purchase of an orchard, garden, and appurtenances, or land for the site of a house, or any or either of them, together with land contiguous thereto, and not exceeding 12 acres, suitable for the residence and occupation of the incumbent of such benefice."

*Malins and Jervis* in support; *Amphlett* for the Bishop of Lichfield; *Bovill* for the railway company.

The *Vice-Chancellor* said, that the present case did not come within the act, and that the petition must be dismissed.

**Court of Queen's Bench.***Regina v. Vicar and Churchwardens of Hammersmith.* June 12, 1852.**MANDAMUS.—MEETING OF VESTRY.—APPLICATION OF MONEYS IN HANDS OF CHURCHWARDENS.—POLL.—SCRUTINY.**

*At a meeting of the vestry as to the application of moneys received for the purchase of land from a railway company, a resolution was brought forward for the application of one-half in building a district church, and the other half in erecting almshouses; and an amendment for the whole being applied to the latter purpose was then moved, but was lost on a poll being taken. It appeared that the vicar had given an opportunity at the meeting to any person of making an*

other proposition. The poll was declared at a subsequent meeting, when a new amendment was moved which the vicar declined to put to the meeting, and also refused a scrutiny. A rule nisi for a mandamus on the vicar and churchwardens to convene a meeting was discharged with costs.

THIS was a rule nisi, granted on June 3 last, for a mandamus on the defendants to convene a meeting of the vestry to determine to what general purposes within the parish the sum now in the hands of the churchwardens should be applied, and which had been received from the Great Western Railway Company for certain land at Wormwood Scrubs. It appeared that at a meeting in April it was moved that one-half should be applied in the erection of a district church, and the other in building almshouses, and that an amendment for the application of the whole for the latter purpose had been put and lost upon a poll being taken. A meeting was afterwards held, at which the result of the poll was declared, and a further amendment was then moved for the application of the money to baths and washhouses, and upon the vicar declining to put the amendment, on the ground the question was disposed of, and also refusing a scrutiny, this rule had been obtained.

C. Clark and Hance showed cause; Pashley, D. D. Keane, and Lush, in support.

The Court said, the vicar had given an opportunity before putting the question at the first meeting to any person of bringing forward another proposition, and it was too late to move the amendment at the subsequent meeting; and the refusal of the demand for a scrutiny would not render the proceedings invalid. The rule must be discharged with costs.

### Queen's Bench Practice Court. (Coram Mr. Justice Wightman.)

In re Gray. June 12, 1852.

#### RULE ON ATTORNEY TO PAY OVER MONEYS.—AFFIDAVITS SWORN BEFORE APPLICANT'S ATTORNEY.

*Affidavits, in support of a rule nisi on an attorney to pay over moneys, were rejected, where they had been sworn before the attorney of the applicant.*

IN this case a preliminary objection was taken to the admission in evidence of affidavits, which had been sworn before the attorney of the applicant for a rule nisi on an attorney to pay over moneys.

Myanard, in support, referred to rule 11, 15 Geo. 2, which, after reciting that "the swearing of affidavits before Commissioners authorised to take affidavits in this Court, is causes wherein such Commissioners are concerned as attorneys of the parties on whose behalf such affidavits are made, is, and hath been disallowed as irregular, which, with respect to affidavits made of the cause of action before process sued out, in order to hold the defendants to bail, hath been found inconvenient;" orders that "all affidavits of any cause of action before process sued out to hold to bail, may be sworn before any Commissioner authorised to take affidavits in this Court, although such Commissioner be concerned as attorney for the plaintiff, and shall be deemed to be regularly taken."

Prideaux, contra, cited Reg. Gen., H. T., 2 Wm. 4, r. 6, which directs, that "where an agent in town, or an attorney in the country, is the attorney on the record, an affidavit sworn before the attorney in the country shall not be received," and contended the rule did not apply to the present application.

The Court, after conferring with the Master as to the practice, said, the objection must be allowed and the affidavits be rejected.

## ANALYTICAL DIGEST OF CASES, REPORTED IN ALL THE COURTS.

### Courts of Equity.

[For the previous Sections of the Digest in this Volume, see

*Privy Council: Appeals*, p. 17.

*House of Lords: Appeals*, p. 38.

#### Courts of Equity:

*Law of Attorneys and Solicitors*, p. 125.

*Contributories under the Winding-up Act*, p. 143.

*Law of Trustees*, p. 165.

*Lunacy*, p. 185.

*Law relating to Infants*, p. 186.

*Law relating to Charities*, p. 203.

*Appeals in Bankruptcy*, p. 225.

*Construction of Statutes*, pp. 104, 286, 306, 325.

*Law of Wills*, pp. 346, 367, 386, 406.

*Husband and Wife*, p. 426, 446, 466.

*Law of Property and Conveyancing*, p. 485.]

### LAW OF PROPERTY AND CONVEYANCING.

[Continued from p. 488, ante.]

#### MORTGAGE.

16. *Setting aside mortgage of assets by executor.—Misjoinder.*—A., the surviving executor of B., filed a bill to set aside a mortgage of the assets, made by C., the deceased executor of B. A. was also the representative of C.: Held, that A. could not sever his character of representative of the original testator, in which he had title to sue, from that of representative of C., in which he could not sue, to set aside his testator's deed; and on this ground the bill was dismissed. *Miles v. Darnford*, 2 Sim. N.S. 334.

17. *Trust for sale.—Claim.—Order for sale.*—Certain tenements were, upon a loan of 200*l.*, assigned by the owner to the lender for a long term of years, upon trust to sell, and

out of the proceeds,—first, to pay the costs of sale; secondly, to pay the 200*l.*, and interest; and, thirdly, to pay the surplus to the owner. The deed contained a covenant by the owner to pay to the lender the 200*l.*, and interest, at the end of six months; and, also, absolute covenants by the owner for title, as upon a mortgage, and for quiet enjoyment by the lender after default. Upon a bill to foreclose the equity of redemption in the form, No. 6, of Schedule A. to the Orders of April, 1850: *Held*, that the case was one for a sale, and not for a foreclosure. *Jenkin v. Row*, 5 De G. & S. 107.

18. *Equitable mortgage.—Inquiry.*—The mere production by a bond-creditor of the title-deeds to the obligor's real estate, without explanation, neither constitutes an equitable mortgage, nor a sufficient ground for an inquiry before the Master. *Chapman v. Chapman*, 13 Beav. 308.

19. *Foreclosure.—Inquiry.—Evidence.—Co-defendants.—Pleading.*—On a bill by first mortgagee against mortgagor and second mortgagee, the plaintiff should prove the second mortgage, otherwise he can only take an inquiry at the first hearing. *Gardner v. Boucher*, 13 Beav. 68.

20. *Redemption.—Foreclosure.*—In a suit by a puisné mortgagee to redeem two prior mortgages of distinct portions of the estate comprised in the plaintiff's security, and to foreclosure the mortgagor on his default of redemption,—if the plaintiff should redeem neither of the prior mortgages, he is not entitled to any decree against the mortgagor; but the plaintiff in such a suit (the defendants not having objected or not being able to object that the suit is multifarious), may redeem one of the prior mortgages, and obtain a decree for redemption or foreclosure against the mortgagor in respect of that estate, without redeeming the other mortgage, and as to such other mortgage submitting to the dismissal of the bill. *Felly v. Wathen*, 7 Hare, 351.

21. *Mortgagor offering by bill to redeem solicitor's lien on documents.—Abandonment of.*—A mortgagee contesting, by his bill, the right of a solicitor of the mortgagor to a lien upon documents relating to the mortgaged property, in priority to his (the plaintiff's) charge, but offering, in case such prior lien should be established, to pay the amount due in respect of the same, is not bound by such offer to redeem the documents to which the solicitor's lien extends, but may abandon his right to the documents, and take such a decree as his position of mortgagee entitles him to, in priority to the lien of the solicitor. *Felly v. Wathen*, 7 Hare, 352.

22. *Mortgages on separate estates.—Foreclosure.—Decree.*—A mortgagee having separate mortgages created by the same mortgagor, on two different estates, has not a right to foreclose both estates on non-payment of the aggregate amount of the mortgaged debts; but can only foreclose each estate separately, on non-payment of what is secured upon it.

Form of decree for foreclosure where the mortgagee has a legal mortgage for the whole of his debt on one of the mortgagor's estates,

and an equitable mortgage for part of his debt on another of the mortgagor's estates. *Holmes v. Turner*, 7 Hare, 367, n.

23. *Investment on mortgage disapproved of.—Trust funds.*—Petition of tenant for life for an inquiry whether it would be for the benefit of infant tenants in remainder to transpose trust funds from Consols to a mortgage security under a power, dismissed, on the ground that the expenses incidental to the latter security generally more than counter-balanced the increase of income. *Barry v. Marriott*, 2 De G. & S. 491.

24. *Foreclosure.—Jurisdiction.*—The time fixed, by the decree in a foreclosure suit, for payment of principal, interest, and costs, enlarged by the *Vice-Chancellor*, notwithstanding the decree had been made absolute, and the order absolute had been signed and enrolled. *Thornhill v. Manning*, 1 Sim. N. S., 451.

25. *Assignment of mortgage.—Construction.—General words.*—An assignment of a mortgage not containing any words of transfer beyond those incidental to a transfer of the mere mortgage, does not pass rent then in arrear. *Salmon v. Dean*, 3 M'N. & G. 344.

#### VENDOR AND PURCHASER.

1. *Contract for sale of freehold and copyhold land.—Timber on copyhold.*—On a contract for the sale of lands, described as partly freehold and partly copyhold, and the timber thereupon (the latter at a specified valuation), upon a condition that the vendor should not be required to distinguish the freehold land from the copyhold, nor the respective boundaries thereof, it was *held*, that, upon the particulars and conditions, the contract for the land and timber was one contract, and not separate contracts; and that the purchaser was bound to pay for the timber at the valuation, notwithstanding the fact that it might be wholly upon the copyhold land, and therefore subject to the rights of the lord, and the restrictions of the custom. *Crosse v. Lawrence*, 9 Hare, 462.

2. *Contract for sale of estate and timber.—Title.—Specific performance.*—Where, upon a contract for the sale of an estate, a separate and distinct contract is made for the sale of the timber upon it, the Court will not enforce the latter contract unless the vendor can give the purchaser such possession and dominion over the timber as will entitle him to fell and remove it; but, if an entire contract be made for the sale, both of the estate and the timber (notwithstanding the purchase-money is made up of distinct sums for each), the vendor is only bound to make out his title to the land according to the contract; and the title to the land is the title to the timber upon it. *Crosse v. Lawrence*, 9 Hare, 462.

3. *Contract for purchase of undistinguished freehold and copyhold land and timber.*—The purchaser of undistinguished freehold and copyhold land and timber, under a single and entire contract, must be considered as estimating, in the price he pays for the land, the price he pays for the timber. *Crosse v. Lawrence*, 9 Hare, 467.

4. *Contract.—Copyhold land and timber*



*thereon.—Title to timber.—Specific performance.*—A contract for the purchase of copyhold land at a certain price, and the timber upon it at a specified valuation, enforced as one entire contract, although the vendor could not show any custom in the manor, or license from the lord, enabling the tenants of the manor, or himself, or his assigns, to fell the timber. *Crosse v. Keene*, 9 Hare, 469.

5. *Opening biddings.—Report of purchase.*—No order will be made to open biddings, until the report of the purchase has been made. *Lovegrove v. Cooper*, 9 Hare, 279.

6. *Compensation for deficiency or excess.—Conditions of sale.—Computing rate of compensation.—Mistake.—Specific performance.*—After a sale by auction of a messuage and lands, —one of the conditions of which was, that any mistake or error in the description of the property, or any other error in the particulars, should not annul the sale, but (except where otherwise provided for by the conditions), a compensation should be given or taken, to be settled by two referees, or an umpire,—it was found that one of the lots contained about 20 acres more, and another about 10 acres less, than the quantity of land described in the particulars: *Held*, that, upon the construction of the condition, the mistake or error thereby contemplated was such a mistake or error as would annul the contract.

That the excess of the quantity of land in one of the lots, and the deficiency in the other, were both subjects of compensation within the condition; and that the Court would, if necessary, refer it to the Master to settle the amount of such compensation, notwithstanding that, from the variety in the nature of the different portions of the land in which the variations occurred, there was no uniform standard for computing such amount.

That, whether a vendor could, or could not, in equity be relieved, on the ground of mistake, from a contract for the sale of lands inaccurately described as to quantity, and which description had been prepared by his solicitor from former particulars and conditions relating to the same property, drawn up by another solicitor on the report of a surveyor,—equity would not, in such circumstances, enforce the contract against the vendor, unless the case should be one for compensation, and the purchaser should submit to make such compensation. *Leslie v. Thompson*, 9 Hare, 268.

7. *Particulars of sale.—Acreage of land specified.—Selling in the lump.*—The actual designation, in the particulars of the property offered for sale, of the number of acres contained in a lot: *Held*, to negative the presumption of any intention on the part of the vendor to sell the estate in the lump. *Leslie v. Thompson*, 9 Hare 273.

8. *Renewal of lease.—Covenant of mesne landlord for renewal.—Specific performance.*—Equity will not decree the specific performance of a covenant by the mesne landlord with his lessee for the renewal of the lease, after the lessee has wilfully neglected or refused to renew; and the non-payment, after demand, of

the fine which the mesne landlord has paid to the superior landlord, amounts to such neglect or refusal. *Chesterman v. Mann*, 9 Hare, 206.

Case cited in the judgment: *Lennon v. Napper*, 2 Sch. & Lef. 682.

9. *Lessor and under-lessee.—Renewal of lease.—Apportionment of fine.—Time of renewal.—Laches.*—An under-lessee, who is not himself bound to take a renewal of his lease, but who is entitled to the benefit of a covenant by his lessor for the renewal of his under-lease, upon payment of his proportion of the fines and expenses of a renewal by the superior landlord, ought, if he complains of the amount of such proportion required from him by the mesne landlord, to apply without delay to a Court of Equity to assess the sum which he ought to pay, submitting himself to the jurisdiction of that Court, to compel him to pay a reasonable sum; and if instead of making such application, and after notice from his mesne landlord that the fine must be paid in a certain time or his right will be excluded, he should delay the payment, the objection that the sum demanded from him was unreasonable, will not excuse his laches.

The time from which the lessee will be deemed to have neglected or refused to renew, is not to be computed from the latest time at which the mesne landlord might have procured a renewal; but from the time at which he applies to the under-lessee to contribute to the fine and expense of the renewal which he is about to obtain, or has obtained. *Chesterman v. Mann*, 9 Hare, 206.

10. *Principal and agent.*—B. became the purchaser of premises at an auction, declaring himself the agent of C. in C.'s presence; but the vendor's solicitor required B. to sign the agreement, and declined to substitute the name of C. Communications afterwards took place between the vendor's solicitor and C., with reference to the title. The vendors afterwards brought their bill against B. and C. for specific performance of the contract: *Held*, that, supposing B. to be the agent of C., yet the signature of B. to the contract made him personally liable to perform it.

That the communication between the vendor's solicitor and the solicitor of C., with reference to the title, was not an adoption of C. as the purchaser in the place of B., but should be assumed to be made in furtherance of the original contract, in which, according to B.'s representation, he was (as between himself and C.) only a formal party.

That the bill of the vendors having been dismissed against C., at his instance, C. would not be allowed to set up, in a suit by B. against himself, that the decree against B. in the suit of the vendors had been improperly obtained in his absence.

That the acceptance of the title by C. in such communications would not be binding upon B., for such acceptance would be regarded as having been made in C.'s own right, as claiming through B., and not as agent for B. *Chadwick v. Maden*, 9 Hare, 188.

[To be continued.]

# The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

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SATURDAY, OCTOBER 30, 1852.
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## COMMON LAW PROCEDURE ACT.

### OPERATION UPON ACTIONS NOW DEPENDING.

WE are induced, by the urgency of the occasion, temporarily to depart from the regular course heretofore adopted in reviewing the provisions of the "Act to amend the Process, Practice and mode of Pleading in the Superior Courts of Law," for the purpose of noticing one of the earliest, and certainly not the least important of the questions likely to arise upon its enactments. The question to which we allude is, the operation of the Act upon actions already commenced and now depending? The first section, as our readers recollect, provides that the Act "shall come into operation on the 24th day of October, 1852." It may be safely assumed, therefore, that all actions commenced after *Sunday*, the 24th of October instant, will be properly commenced and proceeded with in conformity with its enactments, and that actions commenced after that day in any form or manner inconsistent with the provisions of the Act 15 & 16 Vict. c. 76, would be void or irregular.

As regards actions about to be commenced, or which have been commenced, since the 24th October, therefore, no question arises; but as many actions were depending on the 24th October, which had been commenced and had arrived at various stages under the former practice, it is material to consider how far the provisions of the new Act are applicable to such actions, and to what extent the future proceedings in such actions are to be regulated by the recent enactments.

It should be premised, that the Common Law Procedure Act does not, like some other modern Statutes, provide that actions

depending at the commencement of this Act shall be proceeded with and brought to a conclusion under the provisions of this Act; nor does it contain any general provision excluding actions already commenced from its operation, and declaring that they should be proceeded with as if this Act had not passed.

The intention of the Legislature, as to the course to be pursued in regard to actions depending when the new Act came into operation, is therefore to be deduced from a general view of the scope and tenor of the Act, and from a consideration of the specific provisions by which the Legislature has expressed its intention with regard to particular proceedings in pending actions.

The general scope of the Act, as we have frequently had occasion to remark, is to improve and simplify proceedings in the Common Law Courts, without introducing any new principle, or interfering with the substantive rights of suitors. In several specific instances, however, the Legislature has explained its intentions with regard to depending actions and the proceedings to be taken hereafter in continuation or prosecution of such actions. But the enactments expressive of such intention are not general, but limited, relate to particular proceedings, and have a confined operation.

For example, sect. 10 expressly declares, that from the commencement of this Act so much of the Act 2 & 3 Wm. 4, c. 39, as relates to the duration of writs, to alias and pluries writs, and to the proceedings necessary for making the first writ available to prevent the operation of the Statutes of Limitation, shall be repealed, but it expressly excepts from the repeal all that may be necessary "for supporting any writs that have been issued before the commencement of this Act, and any proceedings taken, or to be taken thereon." Under this pro-

viso, therefore, proceedings may still be taken on writs issued before the 24th October last, under certain sections of the Uniformity of Process Act, and as the writ is the commencement of the action for all purposes, it may possibly be contended, that the subsequent proceedings in an action are founded on the writ, and that this section gives validity to all proceedings taken under the authority of the Uniformity of Process Act, in actions commenced before the 24th October.

Without presuming to speculate whether the Judges will be disposed to give so extensive an operation to the language found at the conclusion of the 10th section, we turn to another proximate instance in which the Legislature (by sect. 12) have expressly declared its intention, that writs of summons issued before and in force at the commencement of the Act, may, at any time before expiration, "be *renewed* under the provisions of, and in the manner directed by, this Act." Now, the *renewal* of writs is altogether a new practice, established for the first time by this Act, and it is not inconsistent with the intention, that actions already commenced may be proceeded with under the old practice, to provide that writs already issued should be capable of renewal under this act.

Another instance in which the framers of the Act contemplated, that future proceedings may be necessary, under the old practice, to give effect to proceedings already taken, and the continuance of which is not provided for by the new Law of Procedure, occurs at sect. 92, which provides, that no rule to compute shall be necessary or *used*, but that nothing in the Act shall "invalidate any proceeding taken or *to be taken* by reason of any rule to compute, made or applied for before the commencement of this Act." Here it is expressly provided, that no rule to compute shall hereafter be required, but if obtained before the commencement of this Act, it may be proceeded with and enforced.

Another instance of the intention of the Legislature to maintain so much of the old practice as is necessary to give effect to proceedings taken before the passing of the Act 15 & 16 Vict. c. 76, is furnished by sect. 100, which repeals the Statute 14 Geo. 2, as to *judgment in case of nonsuit*, but excepts from the repeal "proceedings taken or commenced *thereupon* before the commencement of this Act." Under this provision, as we humbly conceive, it will not be competent for the defendant, in the

ensuing or in any future Term, to obtain a rule for judgment as in case of a nonsuit, but if such a rule had been obtained in Trinity Term, and discharged upon a peremptory undertaking to try at the next Sittings or Assizes, as the case may be, the defendant would be entitled to a rule for judgment against the plaintiff in the next Term for not proceeding to trial pursuant to his undertaking.

The instances adverted to suggest, that the Act itself must be referred to, in order to determine, whether proceedings founded upon any altered or abolished practice can be safely continued in actions now depending, or whether the future proceedings must be regulated by and in conformity with the provisions of the new code of practice! When the Act contains no provision, from which it can be clearly inferred that the Legislature meant to suspend the operation of the Act in respect of actions commenced before the 24th October, the practitioner will require to consider whether the provisions of the Act are applicable to the steps he is required to take in order to give effect to the proceedings already taken. This must depend, in some degree, upon the nature of the proceedings requiring to be taken, and the stage to which the action has advanced. For example, if a writ was issued and an appearance entered before the 24th October, no inconvenience, failure of justice, or interference with the rights of the adverse party, would arise from framing the declaration and all subsequent pleadings, in the simple and concise forms prescribed by the Act. On the other hand, if a plaintiff, before the 24th October, delivered a declaration in which, after setting out the particular contract declared upon, he averred the performance of some condition precedent, the performance of which the defendant desired to contest, the new Rules of Pleading provided by sect. 57, would not be applicable to such a case, and the defendant must be permitted, as before the passing of the Act 15 & 16 Vict. c. 76, to deny the performance of the condition precedent.

Whenever the provisions of the new Act are applicable to proceedings already commenced, and that by acting in conformity with those provisions no hardship or additional burthen is thrown upon the moving or the adverse party, we incline to think that the practitioner may safely adopt the new Act, and proceed under the authority of its provisions. On the other hand when the provisions of the new

Act are not applicable to the proceeding requisite to be taken, and that by acting in accordance with its provisions, injustice, delay, or increased expense would probably arise to either of the litigants, we venture to think that the Courts will sustain proceedings taken under the old practice, in continuance of actions commenced before the 24th October. It may be anticipated that the question upon which these remarks are hazarded, will speedily become the subject of judicial consideration, and we shall endeavour to put our readers in possession of the decision upon this and all other questions of importance relating to the working of the new Acts, with the least possible delay.

## FURTHER ORDERS IN CHANCERY.

### PROCEEDINGS AT THE JUDGES' CHAMBERS. 16th October, 1852.

THE Right Hon. Edward Burtenshaw, Lord St. Leonards, Lord High Chancellor of Great Britain, by and with the advice and assistance of the Right Hon. Sir John Romilly, Master of the Rolls, the Right Hon. the Vice-Chancellor Sir George James Turner, and the Hon. the Vice-Chancellor Sir Richard Torin Kindersley, doth hereby in pursuance of an Act of Parliament passed in the 15 & 16 Vict. c. 80, intituled "An Act to abolish the Office of Master in Ordinary of the High Court of Chancery, and to make provision for the more speedy and efficient despatch of business in the said Court," and in pursuance and execution of all other powers enabling him in that behalf, Order and Direct:—

That all and every the orders, rules, and directions hereinafter set forth shall henceforth be, and for all purposes be deemed and taken to be, General Orders and Rules of the High Court of Chancery, viz.—

#### *Summons.*

1. The summons for the purpose of proceedings before the Master of the Rolls and Vice-Chancellors respectively at Chambers, whether originating at chambers or not, may be in a form similar to the form set forth in Schedule (A.) to these Orders, with such variations as the circumstances of the case may require.

2. The summons to be issued under section 30 of the Act of 15 & 16 Vict. c. 80, may be in a form similar to the form set forth in Schedule (B.) to these Orders, with such variations as the circumstances of the case may require.

3. A seal is forthwith to be provided for the chambers of the Master of the Rolls and each of the Vice-Chancellors, and summonses are to be prepared by the parties, and sealed by one of the clerks at the chambers of the Judge from whose chambers they are issued, and a copy of such summons is to be left at the Judge's Chambers by the party obtaining such summons.

4. In cases of applications under 15 & 16 Vict. c. 86, s. 45, applications for guardianship and maintenance of infants, originating in chambers, and of all other applications originating in chambers, a duplicate of the summons is to be filed in the Record and Writ Office, and in cases where service is required, the copies served are to be stamped in the manner provided by sect. 46 of the Act of 15 & 16 Vict. c. 86.

5. In cases where proceedings originate in chambers, the original summons is to be served seven clear days before the return thereof. All other summonses, not being summonses referred to in Order 2, are to be served two clear days before the return thereof.

6. In cases where proceedings originate in chambers, and where from any cause the summons may not have been served upon any party seven clear days before the return thereof, an endorsement may be made upon the summons, and upon a copy thereof stamped for service, appointing a new time for the parties not before served to attend at the chambers of the Judge, and such endorsements are to be sealed at the Judge's chambers, and the service of the copy so endorsed and sealed, is to have the same force and effect as the service of an original summons; and where any party has been served before such endorsement, the hearing thereof may upon the return of the summons be adjourned to the new time so appointed.

#### *Appearances.*

7. In all cases where proceedings originate in chambers, the parties served are before they are heard in chambers to enter appearances in the Record and Writ Office, and give notice thereof.

*Orders and Directions, applicable to all Cases, whether originating in Chambers or not.*

8. In all cases in which by any Order any accounts are directed to be taken, or inquiries to be made, each direction shall be numbered, so that as far as may be each distinct account and inquiry may be designated by a number, and such Order may be in the form set forth in Schedule (C.) to these Orders, with such variations as the circumstances of the case may require.

9. Where an Order is made directing an account of debts, claims, or liabilities, or an inquiry for next of kin or other unascertained persons, unless otherwise ordered, all persons who do not come in and prove their claims within the time which may be fixed for that purpose by advertisement, are to be excluded from the benefit of the Order.

10. Where an Order is made directing an account of the debts of a deceased person, unless otherwise ordered, interest is to be computed on such debts as to such of them as carry interest after the rate they respectively carry, and as to all others under the rate of four per cent. per annum, from the date of the Order.

11. Where an Order is made directing an account of legacies, unless otherwise ordered,

interest is to be computed on such legacies after the rate of four per cent. per annum, from the end of one year after the deceased's death, unless any other time of payment or rate of interest is directed by the will, and in that case according to the will.

12. Where an Order is made directing any property to be sold, unless otherwise ordered, the same is to be sold with the approbation of the Judge to whose Court the cause or matter is attached, to the best purchaser that can be got for the same, to be allowed by such Judge, and all proper parties are to join therein as such Judge shall direct.

13. Where an Order is made directing a receiver to be appointed, unless otherwise ordered, the person to be appointed is first to give security, to be allowed by the Judge to whose Court the cause is attached, and taken before an officer or agent of the Court in the country, if there shall be occasion, duly to account for what he shall receive on account of the rents and profits, for the receipt of which he is to be appointed, at such periods as such Judge shall appoint, and to account for and pay the same as the Court shall direct, or as the case may be, to be answerable for what he shall receive in respect of the personal estate, for the getting in and collection of which he is to be appointed, and to account for and pay the same as the Court shall direct; and the person so to be appointed is to be allowed a proper salary for his care and pains in receiving such rents and profits, or, as the case may be, to have an allowance made to him in respect of his collecting such personal estate.

14. The General Orders of the Court with respect to Receivers shall, *mutatis mutandis*, apply to Receivers appointed under Orders made after these Rules and Regulations come into operation.

15. Recognizances which have been heretofore given to the Master of the Rolls and the Senior Master in Ordinary are hereafter to be given to the Master of the Rolls and the Senior Vice-Chancellor for the time being.

#### *Proceedings in Chambers.*

16. In all cases where matters, in respect of which summonses have been issued, are not disposed of upon the return of the summons, the parties are to attend from time to time without further summonses, at such time or times as may be appointed for the consideration or further consideration of the matter.

17. In all cases of proceedings in Chambers under any Order, the solicitor prosecuting the same shall leave a copy of such Order at the Judge's chambers, and shall certify the same to be a true copy of the Order as passed and entered.

18. Upon a copy of the Order being left, a summons is to be issued to proceed with the accounts or inquiries directed, and upon the return of such summons, the Judge is to be satisfied by proper evidence that all necessary parties have been served with notice of the Order, and thereupon directions are to be

given as to the manner in which each of the accounts and inquiries is to be prosecuted, the evidence to be adduced in support thereof, the parties who are to attend on the several accounts and inquiries, and the time within which each proceeding is to be taken; and a day or days may be appointed for the further attendance of the parties, and all such directions may afterwards be varied or added to as may be found necessary.

19. If, upon the hearing of the summons, it shall appear to the Judge that by reason of absence, or for any other sufficient cause, the service of notice of the Order upon any party cannot be made, or ought to be dispensed with, the Judge may, if he shall think fit, wholly dispense with such service, or may, at his discretion, order any substituted service, or notice by advertisement or otherwise, in lieu of such service.

20. If, in the prosecution of the Order, it shall appear to the Judge that it would be expedient that further accounts should be taken or further inquiries made, he may order the same to be taken or made accordingly, or if desired by any party may direct the same to be considered in open Court.

21. At the time any summons or appointment is obtained, an entry thereof is to be made in a book, called "The Summons and Appointment Book," stating the date on which the summons is issued or appointment made, the name of the cause or matter, and by what party, and, shortly, for what purpose such summons or appointment is obtained, and at what time returnable.

22. Lists of matters appointed for each day are to be made out and affixed outside the doors of the Chambers of the respective Judges, and, subject to any special direction, such matters are to be heard in the order in which they appear in such list.

23. The course of proceeding in chambers is ordinarily to be the same as the course of proceeding in Court upon motions. No state of facts, charges, or discharges are to be brought in. But when directed, copies, abstracts, or extracts of or from accounts, deeds, or other documents, and pedigrees and concise statements, are to be supplied for the use of the Judge and his chief clerk, and, where so directed, copies are to be handed over to the other parties. But no copies to be made of deeds or documents where the originals can be brought in, without special direction.

24. The party intending to use any affidavit on any proceeding in chambers is to give notice to the other parties concerned of his intention in that behalf.

25. The practice of the Court with respect to evidence before the hearing, when applied to evidence to be taken before an examiner in any cause subsequently to the hearing, is to be subject to any special directions which may be given in any particular case.

26. Where a chief clerk is directed by the Judge to examine any witness, the practice and mode of proceeding is to be the same as in the

case of the examination of witnesses before the examiner, subject to any special directions which may be given in any particular case.

27. The original examinations and depositions of parties and witnesses taken by or before the Chief Clerk, authenticated by his signature, are to be transmitted by him to the Record and Writ Office, to be there filed, and any party to the suit or proceeding may have a copy thereof, or of any part or portion thereof upon payment of the proper fee.

28. All Orders made in chambers, and drawn up by the chief clerks or registrars, are to be entered in the same manner and in the same office as Orders made in open Court are entered.

29. Where any account is directed to be taken, the accounting party is, unless the Judge shall otherwise direct, to make out his account and verify the same by affidavit. The items on each side of the account are to be numbered consecutively, and the account is to be referred to by the affidavit as an exhibit, and to be left in the Judge's chambers.

30. Any party seeking to charge any accounting party beyond what he has by his account admitted to have received is to give notice thereof to the accounting party, stating, so far as he is able, the amount sought to be charged, and the particulars thereof, in a short and succinct manner.

31. Upon a receiver's account being left in the Judge's chambers to be passed, a summons to proceed thereon is to be taken out; and the account, when passed, is to be entered by the solicitor of the receiver in books, in the same manner as heretofore; but the affidavit verifying the account so passed is to refer to it as an exhibit, and not to be annexed to it.

32. When a receivership has been completed, the book containing the accounts is to be deposited in the Record and Writ Office.

33. Where advertisements are required for any purpose, a peremptory and only one is to be issued, unless for any special reason it may be thought necessary to issue a second advertisement or further advertisements; and any advertisement may be repeated as many times and in such papers as may be directed.

34. The advertisements are to be prepared by the solicitor, and submitted to the chief clerk for approval, and, when approved, are to be signed by him, and such signature is to be sufficient authority to the printer of the *Gazette* to insert the same.

35. Advertisements for creditors or other claimants are to fix a time for the creditors or claimants to come in and prove their claims, and to appoint a day for the hearing and adjudicating thereon, and may be in a form similar to the form set forth in Schedule (D.) to these Orders, with such variations as the circumstances of the case may require.

36. Claimants coming in pursuant to advertisement are to enter their claims at the chambers of the Judge in the "Summons and Appointment Book," for the day appointed for hearing by the advertisement, and are to give

notice thereof and of the affidavit filed to the solicitors in the cause, within the time specified in the advertisement for bringing in claims.

37. The claimants filing affidavits are not to be required to take office copies; but the party prosecuting the cause or matter is to take office copies, and produce the same at the hearing, unless otherwise ordered in chambers.

38. If on the day appointed for hearing the claims, there are any not then disposed of, an adjournment day for hearing such claims is to be fixed; and where further evidence is to be adduced, a time may be named within which the evidence on both sides is to be closed, and directions may be given as to the mode in which such evidence is to be adduced.

39. Any claimant who has not before entered his claim, may be heard on such adjournment day, provided he enters his claim and files his affidavit four clear days prior to such day, and no certificate of debts or claims shall in the mean time have been made.

40. Creditors claiming debts not exceeding 5l. need not attend on the day of hearing, unless required to do so by notice from some party.

41. After the time fixed by the advertisement, no claims are to be received except as before provided, in case of an adjournment, unless the Judge at chambers shall think fit to give special leave, upon application made by summons, and then upon such terms and conditions as to costs and otherwise as the Judge shall think fit.

42. A list of all claims allowed shall, when required by the Judge, be made out and left in the Judge's chambers by the party prosecuting the Order.

43. In cases where the Court directs computation of the interest, or the apportionment of any fund, which is to be acted upon by the Accountant-General or other person, with out any further Order from the Court, the Order to be made by the Court may direct such computation or apportionment to be made by one of the chief clerks attached to the Court of such Judge, and may direct the certificate thereof, signed by such chief clerk, to be acted upon accordingly, without the same being signed and adopted by the Judge.

44. Where an amount has been directed, the certificate or report is to state the result of such account, and not to set the same out by way of schedule, but is to refer to the account verified by the affidavit filed, and to specify by the numbers attached to the items in the account, which, if any, of such items have been disallowed or varied, and to state what additions, if any, have been made by way of surcharge. In any case in which the account verified by the affidavit has been so altered, that it is necessary to have a fair transcript of the account as altered, such transcript may be required to be made by the solicitor prosecuting the Order, and is then to be referred to by the certificate or report. The accounts and the transcripts, if any, referred to by certificates or reports, are to be filed therewith, but no copies thereof are to be required to be taken by any party.

45. The certificates or reports to be made by the chief clerk to the Judge are not, except the special circumstances of the case shall render it necessary, to set out the Order, or any documents or evidence or reasons, but are to refer to the Order, documents and evidence, or particular paragraphs thereof, so that it may appear upon what the result stated in any such certificate or report is founded.

46. The certificate of the chief clerk to the Judge may be in a form similar to the form set forth in Schedule (E.) to these Orders, with such variations as the circumstances of the case may require, and when prepared and settled, it is to be transcribed by the solicitor prosecuting the proceedings, in such form and within such time as the chief clerk shall require, and is then to be signed by the chief clerk at an adjournment to be made for that purpose. But where, from the nature of the case, the certificate can be drawn and copied in chambers whilst the parties are present before the chief clerk, the same shall be then completed and signed by him without any adjournment.

47. The time within which any party is to be at liberty to take the opinion of the Judge upon any proceeding which shall have been concluded, but as to which the certificate or report of a chief clerk shall not have been signed and adopted by the Judge, is to be four clear days after the certificate or report shall have been signed by the chief clerk.

48. Any party desiring to take the opinion of the Judge, as mentioned in the last preceding rule, is within four clear days after the certificate or report shall have been signed by the chief clerk, to obtain a summons for such purpose.

49. At the expiration of four clear days after the certificate or report shall have been signed by the chief clerk, if no party has in the meantime obtained a summons to take the opinion of the Judge thereon, the chief clerk is to submit the certificate or report to the Judge for his approval, and the Judge may thereupon, if he approve the same, sign such certificate or report in testimony of his adoption thereof as follows:—"Approved, this      day of      ."

50. The certificate or report, when signed by the Judge, with the accounts, if any, to be filed therewith, is to be transmitted by the chief clerk to the Report Office, to be there filed.

51. The time within which an application may be made by summons or motion to discharge or vary any certificate or report which has been signed and adopted by the Judge sitting in chambers, is to be eight clear days after the filing of such certificate or report.

52. Certificates of the chief clerk made as mentioned in Rule 43, and not required to be signed and adopted by the Judge, are to be transmitted and filed in the same manner as those signed and adopted by the Judge.

53. The Orders 47, 48, 49, and 51, are not to apply to certificates on passing receivers' accounts. Such certificates may be approved and signed by the Judge without delay, and upon being so signed are to be filed and forthwith acted upon.

54. A register is to be kept of all proceedings in the Judge's chambers, with proper dates, so that all the proceedings in each cause or matter may appear consecutively and in chronological order, with a short statement of the questions or points decided or ruled at any hearing.

55. Parties attending any proceeding in chambers, without having obtained the previous leave of the Judge to attend the same, are not to be allowed any costs of such attendance, unless by special order of the Court.

56. The costs of counsel attending the Judge in Chambers are not in any case to be allowed, unless the Judge certifies it to be a proper case for counsel to attend.

#### *Deposit of Deeds.*

57. Where any deeds or other documents are ordered to be left or deposited, the same are to be left or deposited in the Record and Writ Office, and are to be subject to such directions as may be given for the production thereof.

#### *Power of Judge.*

58. Powers and authorities given to the Masters in Ordinary of the Court of Chancery by any General Order or Orders of the Court, may be exercised by the Judge sitting in chambers.

59. The power of the Court and of the Judge sitting in chambers to enlarge or abridge the time for doing any act or taking any proceeding, and to give any special direction as to the course of proceeding in any cause or matter, is unaffected by these Orders.

#### *Commencement of Orders.*

60. These Orders shall take effect and come into operation from and after the 1st day of Michaelmas Term, 1852.

#### *Interpretation.*

61. In these Orders the following words have the several meanings hereby assigned to them, over and above their several ordinary meanings, unless there be something in the subject, or context, repugnant to such construction; viz:—

1. Words importing the singular number include the plural number, and words importing the plural number include the singular number.

2. Words importing the masculine gender include females.

3. The word "party," includes a body politic or corporate.

4. The word "affidavit," includes affirmation.

5. The word "Order," includes decree and decretal Order.

6. The word "Receiver," includes consignee and manager.

ST. LEONARDS, C.

JOHN ROMILLY, M.R.

G. J. TURNER, V.C.

RICHD. T. KINDERSLEY, V.C.

**SCHEDULE (A).**  
**Form of Summons.**

In Chancery.

In the matter of John Thomas, an infant,  
or Joseph Wilson  
against  
William Jackson.

Let all parties concerned attend at my chambers [in the Rolls Yard, Chancery Lane, Middlesex], [or, at No. —, — Square, Lincoln's Inn, Middlesex], on the — day of —, at — of the clock in the — noon, on the hearing of an application on the part of [here state on whose behalf the application is made, and the precise object of the application].

Dated this — day of —, 1852.

JOHN ROMILLY, Master of the Rolls, or,  
GEORGE JAMES TURNER, Vice-Chancellor, or,  
RICHARD T. KINDERSLEY, Vice-Chancellor, or,  
JOHN STUART, Vice-Chancellor.

This summons was taken out by A. and B., of Lincoln's Inn, in the county of Middlesex, solicitors for

To

*The following note to be added to the original summons where proceedings originate in chambers; and when the time is altered by endorsement, the endorsement to be referred to as below.*

**NOTE.**—If you do not attend, either in person or by your solicitor, at the time and place above mentioned [or, at the place above mentioned, at the time mentioned in the endorsement hereon], such Order will be made, and proceedings taken, as the Judge may think just and expedient.

*N.B.—The Form of Summons to be obtained under section 45 of the Act 15 & 16 Vict. c. 86, is prescribed by Rule 42 of the Orders of 7 Aug., 1852.*

**SCHEDULE (B).**

**Form of Summons by Chief Clerk.**

In Chancery.

In the matter of the Estate of John Thomas, late of —, in the county of —, deceased,

or  
Joseph Wilson  
against  
William Jackson.

The defendant, William Jackson [or, A. B., of, &c.], is hereby summoned to attend at the chambers of the Master of the Rolls [or, Vice-Chancellor —], in the Rolls Yard, Chancery Lane [or, No. —, — Square, Lincoln's Inn, Middlesex], on the — day of — at — of the clock in the — noon, to be examined [or, to be examined as a witness on the part of the — for the purpose of the proceedings directed by the Master of the Rolls [or, the said Vice-Chancellor] to be taken before me.

Dated this — day of —, 1852,

A. B., Chief Clerk.

This summons was taken out by A. and B.

of Lincoln's Inn, in the county of Middlesex, solicitors for

**SCHEDULE (C).**  
**Form of Order.**

This Court doth order, that the following accounts and inquiries be taken and made; that is to say,

1. An account of the personal estate not specifically bequeathed, of A. B., deceased, the testator in the pleadings name, come to the hands of, &c.

2. An account of the said testator's debts.

3. An account of the said testator's funeral expenses.

4. An account of the said testator's legacies.

5. An inquiry what parts (if any) of the said testator's personal estate are outstanding or undisposed of.

And it is ordered that the said testator's personal estate not specifically bequeathed, be applied in payment of his debts and funeral expenses in a course of administration, and then in payment of his legacies.

And it is ordered, that the following further accounts and inquiries be taken and made; that is to say,

6. An inquiry what real estate the said testator was seised of or entitled to at the date of his will and at the time of his death.

7. An inquiry what incumbrances affect the said testator's real estate.

8. An account of the rents and profits of the said testator's real estate received by, &c.

9. And it is ordered, that the said testator's real estate be sold.

And it is ordered, that the further consideration of this cause be adjourned, and any of the parties are to be at liberty to apply as they may be advised.

**SCHEDULE (D).**

**Form of Advertisement.**

Pursuant to a Decree or Order of the High Court of Chancery, made in the cause — against

the creditors of [or persons claiming debts, or liabilities affecting the estate of, or the persons claiming to be next of kin to, or the heir of, as the case may be], late of — in the county of — who died in or about the month of — are by their solicitors, on or before the — day of — to come in and prove their debts or claims at the chambers of the Master of the Rolls, in the Rolls Yard, Chancery Lane [or, of the Vice-Chancellor No. —, — Square, Lincoln's Inn], Middlesex, or in default thereof they will be peremptorily excluded from the benefit of the said Decree [or Order].

Monday, the — day of — at — o'clock in the — noon, at the said chambers, is appointed for hearing and adjudicating upon the claims.

Dated this — day of —, 1852.

A. B., Chief Clerk.



**Form of Certificate of Chief Clerk.**

8. The defendants have received rents and profits of the testator's real estate, &c. [in the form similar to that provided with respect to the personal estate].

ST. LEONARDS, C.  
JOHN ROMILLY, M. R.  
G. J. TURNER, V. C.  
RICH'D. T. KINDERSLEY, V.C.

"Gentlemen of the Grand Jury,—In addressing you for the first time, I cannot help advertising for a moment to the circumstances of my last interview with your late learned Recorder, Mr. Granger. It was only a day or two before he left London to hold his Midsummer Sessions, and occurred in the Parliament Chamber of the Inner Temple, of which we both were benchers. He spoke with animation of going down to Hull, and then to Durham, where he expected to be triumphantly returned a member of the new Parliament; and so he was; but of

what avail? How little either of us thought that evening, that on this day he would be mouldering in the vaults of the Temple Church, and I sitting here as his successor! On the very last Sunday I sat in my appointed place in the Temple Church, and it was close to the spot where the remains of my predecessor are lying. I thought of my being here to-day, and I leave you to imagine with what feelings of solemnity. What shadows we are, and what shadows we pursue! It is not for me to eulogise the memory of my deceased predecessor, but I will say that I believe he was very anxious to discharge his judicial duties conscientiously, and had to do so under the constant pressure of an unsound physical constitution, which sunk suddenly under an apparently slight attack of indisposition. He died in the prime of life, and as a member of the Legislature and of the Bar, of considerable standing, has left behind him a character of unswerving integrity. In succeeding so unexpectedly to the seat which he left vacant, it is my earnest desire, and will ever be, with a deep sense of my own deficiencies, truly and indifferently to minister justice in a spirit of moderation and firmness, and in humble dependence on the blessing of God. I rely, also, confidently upon the co-operation of those who are associated with me in the honourable and responsible functions of administering justice within this borough. Gentlemen, forgive me for reminding you that the laws with which we have to deal, are based upon Christianity; whose sublime sanctions support every portion of the structure, and dignify, but at the same time restrain, every conscientious functionary, however humble, however limited may be the sphere of his action. Gentlemen, a thousand years ago, our illustrious King Alfred compiled a little code of laws, still extant, and a copy of which I had the pleasure of seeing yesterday in your noble library, for the government of his kingdom. He commenced it with the Ten Commandments, which he set forth one by one, and quoted the confirmation of them by our Saviour in the New Testament: 'Think not that I am come to destroy the law and the prophets: I am not come to destroy, but to fulfil.' He then grandly added—'These, my subjects, are the laws given by Almighty God to his creatures; and if these laws were but obeyed, those of ours, which follow, would be useless.' This is a noble and affecting incident in our judicial history; it is from the first deeply impressed my mind, and, I think, must deeply impress yours. Our laws have, since then, swollen into an enormous bulk and complexity; but they still bear the same relation to religion which distinguished the rude and simple elements of those laws in the days of great and good King Alfred. Whoever realises this fact will see in those laws a splendour hidden from those who do not; and administering them in this spirit we shall best secure that mingling of mercy with justice (each reflecting the rays of the other, or neither is really mercy or justice) which will make our laws respected by even

those unhappy persons who, through our instrumentality, are made to feel their sharpest edge. Gentlemen, the administration of civil justice in this country—I mean that of Common Law and of Equity—has recently been altered and amended to an extent utterly unprecedented; and the practical commencement of the new system must render ever memorable the Autumn of 1852. I believe these changes, sweeping though they may be, which have just been effected, are equally bold, wise, and beneficial, reflecting infinite honour upon all concerned in bringing them about, and conferring an incalculable boon upon the country. The main objects of these changes are to destroy the springs of technicality and delay; to bring litigants together promptly; and strip the merits of their cases of everything calculated to disguise the truth, to distort fact, and to foster fraud. And the same may also be said, to a great extent, of our criminal law (thanks, in no small degree, to one of my learned and excellent predecessors here, my friend Mr. Baines), which has lately been placed upon a basis of plain good sense. The facts of cases now can, or ought to be, reached easily and speedily; while, at the same time, the sacred principles of liberty and justice are seen more conspicuously in action than ever, leaving the whole lump of a humane and enlightened criminal jurisprudence. Let us be thankful for this, and endeavour to discharge our simplified duties with increased efficiency. There is, however, one suggested alteration of our criminal system the propriety of which I, for one, have not yet discovered—I mean the much-canvassed abolition of that part of it which you yourselves at this moment represent—the grand jury. I have paid attention to the subject for a long time, and concur in the opinion of one of the most admirable Judges that ever adorned the Bench at Westminster, and which he lately expressed to me himself; and he was decidedly and altogether opposed to the abolition of this ancient and valuable institution. Gentlemen, no one can tell how soon times may arrive when all would have cause to lament the loss of this real and great bulwark against oppression; and though the system may admit of some improvements in detail, those appear to me requisite only to correct the inconveniences occasionally arising from the hasty or negligent discharge of their duties by grand jurymen themselves. If gentlemen in your position would but faithfully discharge their sworn duties, the institution forms a very valuable and powerful engine for administering the criminal law of the country. It is you alone who set us here, in this Court below, in motion against an accused. Our hands are tied, our lips are sealed, until you loose the one and open the other, by telling us that, as far as the *exparte* evidence laid before you has gone—and to which, of course, alone you rigorously confine yourselves—in your opinion a case exists against the accused, which must be answered at this bar. For my part, I know not which is the greater evil—in

considerately to set us in motion, or inconsiderately to prevent our action; improperly to entertain, or improperly to reject, a bill which had been sent up to you for careful and solemn consideration. You will, I am sure, bear with these observations; not because I have any reason to believe them here specially necessary (for from what I have heard, I believe quite the contrary to be the case), but because I know that for some few years the propriety of retaining or abolishing this time-honoured and most important institution has been, and continues to be, seriously canvassed by those who are keeping a watchful eye upon the mode in which grand juries exercise their functions. These, gentlemen, are the only preliminary observations with which I shall trouble you upon an occasion which I deem of some little importance to both yourselves and to me."

The *Hull Packet*, in a leading article, thus refers to the above address of Mr. Warren, and its sentiments are cordially echoed by the Liberal papers of Hull, the *Eastern Counties' Herald* and the *Hull Advertiser*:—"No one can read the admirable and impressive charge delivered by our new Recorder in the Sessions Court, yesterday, without feeling convinced that he comes amongst us with the most anxious desire to administer justice without favour or affection; and no one who had an opportunity of observing his demeanour on the Bench during the trials which took place subsequently, can doubt for one moment his ability to carry that desire into execution. We know we are only echoing the opinion of our townsmen when we state that Mr. Warren's appointment to the Recordship of our borough is most satisfactory; and the wish that he may long retain this judicial appointment is, we believe, universal."

The *Hull Advertiser*, also, thus records its opinion of the fitness of this appointment:—"Our new Recorder passed the ordeal of his first appearance as a Judge at Quarter Sessions with great credit to himself and great satisfaction to the Bar and the Public. Though the cases tried were not unusually numerous, they were more than usually important, and were well calculated to test the discretion, the discernment, the legal sentences, and the judicial ability of the presiding Judge. Owing to the general desire to catch a glimpse of the Author of "Ten Thousand a-Year" in wig and gown, the Court, during the whole of the Sessions, was densely crowded. Among the learned Recorder's supporters on the Bench, the most diligent in their attendance were the ladies, of whom the number present was unusually great."

The Metropolitan press has not been silent. The Editor of *The Standard* adds to the above passage,—“We have great pleasure in citing this honourable testimony by a Liberal journal to the excellence of a Ministerial judicial appointment.”

## METROPOLITAN AND PROVINCIAL LAW ASSOCIATION.

### THE MEETING AT DERBY.

HAVING in the last Number given the speeches of Mr. Palmer, Mr. Shaw, Mr. Monseley, and Mr. Glynn, we now proceed to report the addresses of the remaining speakers at this important meeting.

Mr. Beaumont entirely agreed on the importance of occasionally holding meetings like the present. At first sight it might seem a useless and absurd proceeding, but it was a fact that they as a Profession had not been so united as they ought to be, and this weakness in their position had consequently oftentimes invited aggression. Considering their numbers, and the improved standard of education now existing, there were not many bodies in the country who could exert so much influence as attorneys and solicitors if they were united. But let it be understood that they were not now assembled to maintain abuses merely because they ministered to their interests. Their object was to assist all well considered plans for improving the law, especially such as related to the practice of the Courts, and to maintain a high standard of education, and a correct and honourable feeling among themselves. To effect this, union was necessary, and union on such a basis would make them strong. It was indispensable that they should use their own strength in their own cause, since they could not reckon upon external aid. Will the heads of our Profession, will the Bar do battle for us? They will not, it appears, disdain to enter our ranks. Government solicitorships, town-clerkships, manorial stewardships, these attorneys' offices it is not, it seems, inconsistent with the etiquette of the Bar to fill. But I am afraid it must be recognised that the Bar do not hold the solicitors in very especial regard. I hold in my hand a pamphlet written by a gentleman of honourable name, one Mr. Charles Rann Kennedy, a barrister, in which he is so good as to communicate to us his notion of the proper relative position of the barristers and the attorneys. The attorney should, according to this gentleman, be the servant of the barrister! Here are his words:—"Why should you employ a middleman to do that which is best done by yourself? If the attorney were only the barrister's clerk, as under a good system he should be, there would be no harm in his introducing the case to his master." And having thus favoured us with his impression of our own body, he begs of us to "Consider what a well-educated barrister is.

He has devoted his time to the study, not of the mere routine, but of the science of law. Nor is law the only commodity in which he deals. His mind is enlightened by those liberal studies which make up the scholar and the gentleman—history, poetry, philosophy. We barristers are gentlemen and scholars—as a class, we are above the attorneys; we have better education, higher thoughts, greater capabilities—would that we had more opportunities for their development!—but we must not think too much of ourselves for all that.” Now it is satisfactory to learn all this upon authority so competent and unimpeachable. The barrister, then, is so highly sublimated a being as to be secure against ordinarily noxious influences; and the things which in an attorney would have an ugly look become hallowed and dignified in his peculiar circumstances. “He is,” says Mr. Kennedy, “something very different from the mere red-tape lawyer.” Ah, very true, Mr. Kennedy. It must have required the mind of more than an ordinary lawyer to have devised that profitable etiquette by virtue of which the old system of back refreshers existed; by the happy operation of which a retainer could be made sure only by the multiplication, at every minute stage of a suit, of briefs and fees which the attorney knew to be unnecessary and desired to prevent; in conformity with which, but in defiance of the requirements of common honesty, fees must never be returned, though the business for which they were paid was unperformed, and the ruin of the client might be the consequence;—nay, which rendered it matter of doubtful propriety and infrequent practice, that they should be restored even on the elevation of the barrister to the judge’s seat, and here again, whatever the consequences to the unhappy client—a system not in compliance, but in despite of which, and in utter scorn of the very theory of an honorarium, an eminent serjeant of the present day, and a man undoubtedly of high character, endeavoured, until successfully resisted by the two law societies of London, to fix at the moderate sum of 25 guineas the price below which he would not be sold upon his circuit, thus, independently of other considerations, giving an obvious advantage to the rich man over the poor. Be assured that the Bar will protect themselves, if not in one way, in another; for, observes Mr. Kennedy again “It is better that the client should have direct access to the barrister for advice. It is better you should go to the fountain head than be obliged to drink from the muddy stream.” . . . “A false and idle notion has got abroad, that it is disreputable for the barrister to come in contact with the client. It is an insult to both, to suppose any such thing. The *jurisconsulti* of the Romans had no such false pride. They did not see their clients vicariously. There is nothing degrading in the performance of an honourable service, whether for a fee or otherwise.” Yes, Mr. Kennedy, the *jurisconsulti* of whom you write did not receive fees; the English Bar does; and herein, if in nothing else, consists a difference between

Hortensians and Cicero of Rome, and Mr. Charles Rann Kennedy of Birmingham. Sir, I am persuaded that if we would impress our views upon the Legislature or the Ministry, it is not to be done by approaching the Bar with timid and mincing phraseology, but it is to be accomplished only by trusting to ourselves, by showing that we have the power to maintain our own cause, and that we intend to use it. Mr. Beaumont proceeded to say that they possessed great facilities for accomplishing the object they had in view. Independent of the various law societies throughout the country, they had in London two societies of recognised authority; and they were thus enabled to exert an influence attended with great practical results. The course they pursued on the certificate duties question was successful, and honourable to both societies; and it only required that they should inoculate the public mind with a conviction of the utility of their efforts in a right direction, in order to give greater success to their labours. It was but the other day that the report of the Royal Commissioners upon Equity Reform was issued, and it was right the public should know that all the main points in that report had been previously embodied in the report of the Solicitors’ Law Committee and presented six weeks before. The Abolition of the Masters’ Office was suggested by the solicitors, and duly adopted by the Royal Commissioners; and he trusted and believed that the society would proceed vigorously in the same useful career. It must not be forgotten, however, that position is power. Adam Smith said, the army and navy were in some degree compensated for their small pay by their position; but if Parliament reduced attorneys to the starvation point, and let in a class of men who would be a pest and a scourge to the community, their position would be destroyed, and the interest of the public would suffer. It was then a right and a duty which they owed to themselves to make every legitimate use of the influence they at present retained, and insist on being treated as gentlemen.

Mr. Ryland, of Birmingham, expressed the obligations he felt to be due to the society for the admirable reports issued from time to time,—reports which were very useful and much prized. Their object was to improve the law, as well as to maintain a proper position; and undoubtedly solicitors and attorneys were the most qualified to make suggestions calculated to be beneficial to the public. Mr. Ryland said, that the local societies could effect little good in that respect, for want of a closer connexion one with another; but considerable vitality might, perhaps, be imparted to them, if the central committee would give the local committees something to do.

Mr. Edwin Field said, there had been a general understanding that in the observations which were to be addressed to this meeting, the speakers should avoid, as much as possible, going into the details of any particular measures, and he was not disposed to depart from the rule that had been laid down further than

this, that he thought that he should not trench upon this rule if he were to allude to some of the subjects which had engaged the attention of the Association. His object, principally, was to show their successes and their failures. What they had tried, what had not succeeded, and why they had failed. A chief cause of failure would thus be found to be a want of active local co-operation on the part of the provincial members of the Profession. A previous speaker had said, that the London Committee ought to give some definite work to the country members. He (Mr. Field) would rather say that the country members must, of themselves, begin to work, and that they should make the London Committee assist them. The matters that had engaged the attention of the Society, and to which he alluded, were matters in which the public had a vastly greater interest than the Profession. He had always, in connexion with the Association, acted with the most perfect conviction that the true interests of the solicitor were identical with those of the client; and he must add, that every member of the Association with whom he had had to act, had been actuated by the same feeling. It was true that at present, by the operation of Acts of Parliament, the pay of the solicitor was made to depend upon various formal steps being taken in the course of a cause in which the public had no interest, and which had no real bearing on its result. But to the abolition of all such regulations some of the main efforts of the Association had been directed, regardless of their immediate effect upon the remuneration of the Profession. And by nobody had all needless forms been ever denounced in more uncompromising terms than by this Association. Its whole history was the history of one continued attack upon them. The public interest in getting rid of these things was manifest, for the value of all property, and almost its very existence, depends on a ready access to Courts of Justice. At present the Judge was approached by a series of forms and ceremonies resembling those used in approaching the Emperor of China—a series of bows and genuflexions were required from the suitor before he was allowed to speak to the Judge; and for each one of these he had to pay, as a separate stage in his cause. And the solicitor was compelled by law to receive his remuneration only in respect of these genuflexions *seriatim*, and to act almost or quite gratis in respect of the real object, the speech to the Judge. The late changes, for example, in Chancery, had been on matters which this Society had been for the last five years dragging before the public; but how had they been carried out? By a Bar Commission, acting, no doubt, honestly in their individual intentions, but with a very strong Bar bias, and with a real belief that the interest of England required that the Bar should be supported and protected, and their very fees granted and secured to them not by the law of supply and demand, but by Act of Parliament. Nothing could be a stronger instance than the late change, by

which, while a printed form of Chancery bills to be used in future, was provided, it is at the same time required that these very printed forms should be carried to counsel, to whom a fee must be paid for simply subscribing their names at foot. And yet, be it remembered, this same abuse which, from ancient times, had prevailed at common law, had been put an end to there, almost at the same time that it was re-enacted in Chancery. Counsel were of great value in their province, but there should be no law to compel their employment, and the suitor ought to go to them only when they are wanted. Unfortunately the laws under which alone the solicitor could receive his remuneration held out to him the strongest inducement to wink at these abuses, and to employ the Bar copiously and needlessly. In many cases, where a man did a thing himself for 6s. 8d., and at great personal exertion and responsibility, he would by law be paid many guineas and be saved almost all personal trouble and responsibility if he employed counsel. For the honour of this Association, they had always resisted the continuance of this temptation, and protested against all useless forms, and had desired to have their mode of remuneration put upon some sounder basis. In all the recent equity changes, all of which were unfortunately drawn up too much under a Bar bias, this vicious principle was continued. It was a great question, how far it was right to keep in the law any legislative tariff of prices at all. In every other branch of occupation it is open to the employer and employed to arrange their own terms. In the law this was still prohibited. Formerly everything was regulated by legislative tariff—the price of bread in the market, and the rate of wages, as well as law charges. If it was right to abolish the tariff in all other cases, how far is it wise to continue it in the law? If you enact a tariff, the attorney must bring himself into the category of the tariff, whether it is for the interest of his client or not. This was a position which this Association had always desired to avoid as adverse to the interests of the public and dishonourable to the Profession. In none of the late changes, however, had the old vicious principle been abandoned. What had been the effect of this protective and regulative system of legislation on the solicitors' branch of the Profession? For the last ten years the number of men seeking admission into our branch of the Profession, that is to say, the articulated clerks, had been annually decreasing. If in an open Profession like the Law, and in one which addresses itself to the first wants of civilized society, the body does not increase in proportion to the increase of the wealth and population of the country, there must be something radically wrong. Now it was a curious fact, that from 1833 to 1839 the average annual number of articulated clerks had been 528; in the next five years the average annual number had been only 478; and in the next two years, 1845 and 1846, it had been 483. If you enact by an arbitrary law that there shall be two branches of

the Profession, and if part of every business must be done by the one and part by the other, each branch will be endeavouring to get as large a share as possible, and you would often be employing two men where one would be quite enough. The experience of America showed that where there is no legislative separation of the Profession, a separation naturally takes place so far as the interest of the client requires it. Those who have a gift for advocacy confine themselves to advocacy, and are employed as advocates when the interests of the client require it, but not otherwise. Mr. D. D. Field, the author of the recent American Codes for the Consolidation of Law and Equity, had stated at a meeting of the Law Amendment Society last Spring, that our system of arbitrary separation was, in his opinion, a very false one, and that while the text books upon the Law of Nations and the conflict of laws used throughout Europe, and also many of our English text books, had been written by Americans, they would not have been qualified to write those books but for their early experience in what we should call the attorney's branch of the Profession. At any rate, we cannot produce works written here by members of our Bar of equal talent and value to those alluded to. Neither does the Legal Profession in America suffer for want of the protection and legislative regulation we bestow upon it here; for in no country are so many of the highest offices in the State filled by lawyers. The question of the respective rights of the two branches of the Profession was much discussed in Parliament last Session, and it was no use disguising the fact from ourselves that it must be settled, and settled on the sole basis of the public interest, which was all that the solicitors desired. With all its folly and insolence, unworthy of the name of Rann Kennedy, there was this basis of truth in the pamphlet from which Mr. Beaumont had quoted, that the attempt artificially to keep employed two distinct branches of the Legal Profession was in many cases detrimental to the public. If the public interest required the abolition of the solicitors' branch of the Profession, be it so. But, then, give solicitors an opportunity of being called to the Bar at once, or at least one equal to that enjoyed by the rest of the community. Until recently, the Bar (who were the sole regulators of admission to their own ranks) gave the solicitors such an equal opportunity, but now they required from the solicitors, the only body fitted by their previous education for the occupation, five years, while they admitted any one else in the world, a ticket porter for instance, in three. This subject must soon become one of prominent public importance. He could not avoid it here, especially after the reference to Mr. Kennedy's pamphlet. Many of the suggestions of this Association had been recently adopted by the Legislature; indeed, there was scarcely anything of value in the recent changes in Equity, which had not been previously urged in their reports. The Irish Chancery Reform

Act was not only based upon draft bills prepared by this Association for England, but was, in great part, actually copied verbatim from them. The Association drew it—paid counsel for settling it—and the Government took it, and applied it to Ireland, and refused to apply it to England. Why? Because the local members of the Association failed to back up the Central Committee, by applying to their members of Parliament to force the subject before the Legislature. The case, if it could have been fairly opened, was unanswerable. The scheme of the Irish Bill was to allow, not to compel any one to apply to the Court by petition, instead of by bill, if he pleased, and the result has been, that of many hundred suits which have since been instituted, very few indeed, if any, have been by bill. We applied for this measure for England, although very detrimental to our pockets, and fought for it, but could not get it, because you gentlemen in the country did not sufficiently bestir yourselves. People may say, why is a petition better for us than a bill? And where is the Bar bias you speak of, in still requiring a bill in England, when a petition does so much better in Ireland? A petition requires no particular form, is not stuffed with technical subtleties, and may be drawn by any one, and amended even after the hearing before the Judge; while the bill is the nucleus round which all these subtleties, and special pleading tendencies, especially gather themselves. And then petitions are generally prepared by solicitors, without counsel, while a bill, even if copied from a printed form, has to receive his signature, purchased by an *honorarium*. Talking of bills—the recent rule as to printing bills shows the influence in recent changes of a Bar bias, opposed to the public interest, and arising out of the enforced division of the Profession into two branches, and which could not have occurred if the solicitors' branch of the Profession had received a hearing, even in the recent deliberations of the Chancery Commission. The solicitors are the purse-keepers of the clients; their personal advisers and friends, and alone known to and trusted by them. The Bar looked on themselves as on a higher platform, above the level on which suitors and solicitors moved; and surely this purse-keeping body should have been allowed one representative in such a deliberative body as the Commission. It was not allowed this: and one result was, that in future bills in Chancery not only must still be used in Court here, but must also be all printed at a vast expense of money and trouble to the suitors. Of all documents used in a suit, the bill is the most worthless. It is notoriously stuffed, and allowed to be stuffed, with lies, and subject to be perpetually altered. It was in future to be printed, as far as he knew, only for some fancied facility to leading counsel in reading their briefs. And yet he (Mr. Field), would venture to say, that the bill (except the prayer), was more often than not (amicable cases taken into account), never read by the counsel at all. As

far as his (Mr. Field's) knowledge went, there was only one sane man, and he was a Commissioner, who in his heart believed in this silly printing regulation, connected with the late Chancery changes. The Association had tried to prevent this new regulation, and had failed. Many things that we have obtained with great difficulty, we have obtained only in an imperfect form. He was confining himself in all his illustrations of the public mischief arising from the present state of the Profession to those Chancery matters in which the Association had moved, because he had attended himself only to that part of the business of the Association, and understood no other. The recent provisions for the administration of the estates of deceased persons are one of these, and afford another strong instance. What can be more absurd, than that when everybody desires the estate to be administered, you should require a bill to be filed, falsely alleging that the executor refuses to produce those accounts, which he is all the while most anxious to have dealt with, and that he has driven the plaintiff to come to the Judge to compel him, and then that the Judge should have to make solemn order upon him to do that which he was all along anxious to be allowed to do of himself. The recent alteration only partially obviates this. He (Mr. Field), had only yesterday an insolvent estate of about 150*l.*, which could still be dealt with by bill alone, because there was a little real estate not devised to be sold. We tried to extend these clauses, and again, against our pecuniary interests, looking at them from a narrow point of view, but we failed, owing to a want of parliamentary support. Take as a last instance of our efforts for important reforms and their failure—the subject of the taxation of the suitors of the Court for its maintenance. It is unjust to tax them at all, but how much more unjust is it to make the poor man who goes there for a legacy of 100*l.* pay as much as one who goes there for one of 10,000*l.* It would be just as reasonable at a turnpike gate to make a poor man's donkey-cart pay the same toll as the peer's carriage and four. We obtained two reports from a Select Committee of the House of Commons in favour of a rateable taxation, and the Suitors' Relief Bill was originally prepared so, but the present Government struck out that provision, and, righteous as the case was, and strong as was the party that had originally drawn the bill, the Association could not procure a debate upon the question. Why? For want of more efficient local support. Orders of course still most improperly retained, would afford another instance of a clear case in favour of the public defeated from the same cause. One word more as to the future doings of the Association. It must, of course, continue to try to rectify the various Legislative miscarriages he had alluded to. It must also continue to agitate for additional Judges in the Court of Chancery, and so for a fair trial of the new plan of working the Court by Judges instead of Masters. And beyond the Chancery Court, though intimately connected with it, there was

an important subject included in the prospectus, and often alluded to in the annual reports, which, though not yet dealt with by the Association, must shortly engage the public attention. He meant that monstrous incubus, the Ecclesiastical Courts, that is to say, those Courts when dealing with civil matters, and when civil rights are mixed up with the ecclesiastical affairs, and transacted by a separate and expensive order of practitioners kept up exclusively for the purpose. It was clear that if the public interest was to be consulted, this anomalous state of things must be put an end to, and that the Association must forthwith address itself to the work.

The *Chairman* remarked, that, with regard to the publication of the circulars of the Association, communications of that kind were very costly; but if the Society gained an accession of strength, they would, of course, be able to issue a circular more frequently. Some reference had been made to the increased number of attorneys. According to the register for the nine last years, there have been nearly 400 applications for admission to the Profession yearly, making 3,600 during the nine years, whereas the actual increase of attorneys taking up their certificates was, 180; while the increase in the number of barristers had been 82 per cent.

Mr. *Moss*, of Hull, suggested, as one mode of raising the funds of the Association, that the local Societies should make a grant, and on his return home he would certainly make a proposition to that effect to the members of his own. Many gentlemen who were not members were reaping the benefit of the services of this Association, and it was therefore only fair that something should be contributed to its funds. Besides, one of the many objects for which the local Societies was formed to accomplish, was effected by this institution, and that was an additional reason why a grant should be made.

The *Chairman* said, the suggestion that a donation should be thus made was a good one. It was originally recommended that the local Societies should subscribe, but as those Societies did not exist in every town, it was thought better to trust to individual exertion and co-operation, and this plan the Committee adhered to. Donations in addition to that exertion would undoubtedly do great good.

Mr. *H. Mozley* stated, after the exposition of the principles of the Association and their utility had been so ably explained by the *Chairman* and the other members present, by Mr. *Shaw*, the present Mayor of Leeds, amongst others—he had the pleasing duty to propose a vote of thanks to the *Chairman* for his able and impartial conduct in the chair that day. The motion was carried amidst loud applause.

The *Chairman* returned thanks, and the meeting adjourned to the Royal Hotel to dinner, at six o'clock.

## SUGGESTIONS ON CHANCERY COSTS.

### PAYMENTS TO DEPONENTS AS WITNESSES.

THE new mode of taking evidence in a Chancery suit will in a great measure confine many cases to affidavits only on both sides. This mode of obtaining evidence very often puts a plaintiff or defendant to considerable expense in remunerating the parties who make such affidavits, and for which no remuneration or allowance is made to him. I would therefore suggest that the Taxing Masters should by a scale of fees be enabled to allow to a successful party in a suit any reasonable amount he may have thought it incumbent on him to pay a deponent for his loss of time attendant upon making an affidavit, which sometimes must be very great, most particularly in a patent or railway case or upon an injunction. A scale of fees for witnesses is acted upon at Common Law, why should not a similar one be countenanced in Chancery? Of course, a discretion would still be with the Taxing Master in particular cases according to the nature of the facts deposed to, as well as the length of the affidavits. E'C.

### PROFESSIONAL GRIEVANCES.

THE Profession has been barbarously used by those whom they have helped to raise to high offices. Their negligence has produced a serious crisis.

The old County Courts fell into disuse, the public wanting better Judges, and so will the present County Courts after some time. The County Courts have increased litigation to a great extent, the cases are badly and hurriedly got up (some indeed are put into a fit state by the charity of able solicitors), the cases are generally badly advocated, and the Judge is bothered by their great numbers and by the points that oddly arise under such circumstances. The County Courts are a great expense to the nation, to the parties, and the witnesses, who are wretchedly paid.

It is impossible to look upon our immense libraries without feeling there must be a learned and laborious Profession. The load is increased by the new Statutes which are brimful of points: Chitty used to say the new Statutes are an accumulation to the former stock.

When will there be an end to the mania of Statute making? Statesmen should read and consider well Lord Hale's Preface to Rolles Abr. and Lord Hale's "Considerations touching the Amendment and Alterations of Laws." See *Hargr. Law Tracts*, 248.

As there must be a learned and laborious Profession, so they must be honourably paid. W.

An old officer of the King's Bench says, that if the Common Law Procedure Act had been passed some years ago, we should not have had the New County Courts.

Forty years ago, it used to be said that one-half of the questions of difficulty in Westminster Hall were in cases under 20*l.*; if so, the County Court Judges have plenty on their hands without more.

How many difficult questions arise in actions between 20*l.* and 50*l.*?

It is unjust to fix both plaintiff (who ought to have his rights) and defendant with the Judge of the district without appeal (50*l.* and costs), supposing the Judge to be incompetent, (supposing a trader, and his bills are delivered 20*l.* and 50*l.*, is he to be denied justice?)

The old County Courts were complete failures: this is an experiment, perhaps going the same way.

The policy and wisdom of the Law were to have three decisions of competent Judges, so Lord Eldon said (*Ves., jun.*), and the policy and wisdom of the Law give three Superior Courts, rightly judging that the subject's privilege is to choose his own Judge. Antagonist Courts keep the Law right. W.

### DISSOLUTIONS OF PROFESSIONAL PARTNERSHIPS.

*From Sept. 21st, to October 22nd, 1852, both inclusive, with dates when gazetted.*

Foster, Sir William, Baronet, Clement William Unthank, Randall Ellis Burroughes, and John May Robberds, Norwich, Attorneys and Solicitors, so far as regards the said Clement William Unthank. Oct. 5.

Kingdon, Thomas and George Sydney Davies, Wimborne Minster, Attorneys, Solicitors, and Conveyancers. Oct. 15.

Parsons, Arthur, and William Watts, Nottingham, Attorneys, Solicitors, and Conveyancers. Oct. 1.

### PERPETUAL COMMISSIONER.

*Appointed under the Fines and Recoveries' Act, with date when gazetted.*

Hebbert, John Benbow, Birmingham, in and for the County of Warwick, also in and for the Counties of Stafford and Worcester. Oct. 5.

### PATENT AGENTS.

By the Act for Amending the Law in relation to Patents for Inventions, 15 & 16 Vict. c. 83, the Commissioners are, by sect. 3, enabled to make rules and regulations respecting the business of their office, and all matters and things which, under the provisions therein contained, are to be under their control as to them may appear expedient.

I trust, therefore, the Law Society will not fail to attempt, at least, to put a stop to the procuring of patents by unauthorised and incompetent persons—the business is clearly that of a solicitor, and of a solicitor only, whose charges would, in fact, be less than those of the host of "patent agents."



It is to be hoped that on a proper representation to the Commissioners, they would be induced to pass some stringent resolutions on the subject. Considering how much professional men have been mulcted of late, they cannot afford quietly to relinquish anything to which they are fairly and legally entitled.

CRIVIS.

## NOTES OF THE WEEK.

### HULL BOROUGH SESSIONS.

THE unusually important character of the cases for trial this Sessions, and the untiring patience of the Recorder in bringing the whole circumstances of each case fully before the jury, have occasioned an unusual prolongation of the proceedings. The Court opened on Thursday, October 14th, at ten o'clock, and

did not close until the Wednesday evening ensuing. Universal satisfaction appears to have been given by the new Recorder, in his discharge of the trying duties devolving upon him at the Sessions just closed. It has been remarked that Mr. Warren, like one of the best Recorders Hull ever had, and one of the best Judges England now possesses—Mr. Cresswell—has entered his judicial office when quite new to the practice of Sessions Courts; and it is observable, also, that one of the first acts of each has been to give increased importance and efficiency to the *Venue* proceedings. We believe it is a fact that the present rules of the *Venue* Court, which Mr. Warren has signified his intention of altering, so as to give effect to the altered and improved state of the law at the present day, were drawn up by Mr. Cresswell. The jurisdiction of the *Venue* Court is, we understand, unlimited in amount.

## RECENT DECISIONS IN THE SUPERIOR COURTS, AND SHORT NOTES OF CASES.

### Lord Chancellor.

*Dyke v. Rendall.* July 24, 27, 1852.

MARRIED WOMAN.—EQUITABLE BAR OF DOWER BY SETTLEMENT OF PERSONALTY.

Held, that a settlement executed on the marriage of the plaintiff, whereby her husband covenanted by bond to pay the sum of 2,000*l.* and interest to trustees within six months after his marriage, in trust to pay the interest after his death to his wife for life, with remainder to her children, barred her right to dower of real estates subsequently acquired by her husband and sold to a purchaser, notwithstanding there still remained a sum of 1,500*l.* due on the bond. And, on appeal from Vice-Chancellor Knight Bruce, the plaintiff's bill seeking to charge her dower on such real estates, was dismissed.

The case of *Power v. Sheil*, 1 Moll. 296, disapproved of.

It appeared that a settlement was executed upon the marriage of Mr. Dyke and the plaintiff, in June, 1810, whereby the former had, in consideration of 2,000*l.* paid him by his father, and a sum of 1,500*l.* by the plaintiff's father, covenanted by bond to pay 2,000*l.* and interest, within six months of the marriage, to trustees upon trust to pay the interest, after her husband's death, to the plaintiff and her assigns for her life, with remainder to her children, and that the bond had been accordingly given. The husband had become entitled to certain real estates in Wiltshire, which the defendant had bought in 1847 from the purchaser from Mr. Dyke in 1820, and it was now sought to charge the defendant with the plaintiff's dower to the amount of the deficiency of her husband's payments under the bond, amounting to 1,500*l.* The Vice-Chancellor Knight Bruce

having held that the plaintiff was entitled to dower, this appeal was presented.

*Malins and Bird* in support; *Greene and Vance*, contra.

The Lord Chancellor said, that before the Statute of Uses (27 Hen. 8, c. 10), most of the land being settled to uses, the legal estate was not in the owner, and a wife had consequently no claim to dower, notwithstanding any settlement, except where a jointure was secured to her by a charge on real property. It was clear that statute did not apply here, and the question was, whether the marriage settlement created an equitable bar of dower. The basis of an equitable bar was contract, and a settlement of personality was in equity as much a bar of dower as a jointure at law, provided the contract was a fair one. In this case it was clear the settlement of the 2,000*l.* should be in satisfaction of dower, and the plaintiff could not come, if the bond were not paid, on the real estate, and still less after it had been sold. The bill would therefore be dismissed, but as it had been filed upon the authority of *Power v. Sheil*, 1 Moll. 296, it would be without costs.

### Vice-Chancellor Parker.

*Francis v. Francis.* July 15; August 5, 1852.

SPECIAL CASE.—PAYMENT OF PREMIUMS ON POLICIES OF INSURANCE MORTGAGED TO TESTATOR OUT OF CORPUS.

A testator had lent moneys upon the security of certain policies of insurance and real estate, and by his will gave all his estate and effects to trustees in trust to convert into money, and until such conversion to pay the interest or rents and profits to his daughter to her separate use without power of anticipation for life, and to her children at her death. It appeared after the testa-

tor's death, that the mortgaged property was insufficient to pay the premiums on the policies: Held, on special case under the 13 & 14 Vict. c. 35, that the trustees should pay the same out of the corpus, to be repaid with interest upon the securities being wound up.

THE testator, by his will, gave his estate and effects to his trustees on trust to convert into money, and he directed that they should pay the interest, or the rents and profits of his real estate, until so converted, to his daughter, the plaintiff, to her separate use without power of anticipation, for life, and after her decease to her children. It appeared that the testator had advanced a sum of 24,000*l.* to a Mr. Hammond, upon security of a policy of assurance on his life, and of his life interest in certain estates. Upon the testator's death, in 1845, it was ascertained, upon the mortgagor failing to pay the interest, that the security was insufficient by reason of prior incumbrances. This special case was now presented, under the 13 & 14 Vict. c. 35, for the opinion of the Court, whether the premiums, to be paid in order to keep up the policies of assurance, should be paid out of the annual income of the residuary estate.

Greene for the plaintiff and tenant for life; H. Stevens for her husband and children; Allsutt for the trustees.

*Cur. ad. vult.*

The Vice-Chancellor said, that so much of the corpus as should be necessary would have to be applied in payment of the premiums, and the advances so made would be treated as so much of the testator's estate, and have to be repaid upon the winding up the security, with interest. And the trustees must exercise their own discretion as to the sum to be allowed to the tenant for life until some of the securities should fall into possession.

### Court of Queen's Bench.

*Stewart v. Anglo Californian Gold Mining Company.* April 29; June 18, 1852.

JOINT-STOCK COMPANY.—SIGNING DEED.—FORFEITURE OF SHARES.—NOTICE.

Under the deed of settlement of a joint-stock company, which was provisionally and afterwards completely registered under the 7 & 8 Vict. c. 110, it was provided that the directors might declare any shares forfeited the holders of which did not execute the deed within three months, and certain shares held by the plaintiff were accordingly declared forfeited upon his not signing within the period limited. A notice had been given the day before the three months expired, to the plaintiff: Held, that the company were not bound to give notice, and that they were therefore entitled to judgment in an action brought by the plaintiff to recover damages for their refusing to allow him to sign the registered deed.

This company was provisionally registered

in 1850, and the deed of settlement was executed by one-fourth of the shareholders in August, 1851, and provided *inter alia*, that the directors might declare any shares forfeited upon the holders thereof not executing the deed of settlement within three months. It appeared that the plaintiff had not executed the deed within the period prescribed, and that his shares had been declared forfeited, but notice had only been given to the plaintiff that he was required to sign the day before the expiration of the three months. This action having been brought to recover damages for the defendants' refusal to permit the plaintiff to sign the registered deed in respect of the shares in question, the defendants pleaded that he was not possessed, and the point was reserved, whether the shares had been duly forfeited.

E. James, Paterson, and J. Thompson showed cause against the rule, which had been obtained to set aside the verdict for the plaintiff.

*Cur. ad. vult.*

The Court said, that looking at the 7 & 8 Vict. c. 110, and the nature of the undertaking, the shares had been duly forfeited, and as to the objection of the want of insufficient notice that the plaintiff was required to execute the deed, it was clear that no notice was required, as the shareholders had an opportunity of becoming acquainted with the provisions of the deed of settlement under which their shares might be declared forfeited for non-execution within the time limited, and the defendants were therefore entitled to judgment.

### Court of Exchequer.

*Mitchison v. Nicholl.* April 24; June 5, 1852.

CHARTER-PARTY.—INCREASED FREIGHT, WHERE GOODS PLACED IN CABIN.

The defendant agreed by charter-party to bring wool for the defendant from Bombay to England, at a freight of 3*l.* 10*s.* per ton. It appeared the defendant's agents had, after loading the wool in the usual parts of the vessel, stowed the wool which remained over in the cabins—the captain having assented thereto, as there were no passengers: Held, that the plaintiff was entitled to recover an increased rate of freight on the goods so placed in the cabins, as the defendant could not place them there under the charter-party.

THIS was a rule nisi, granted in Hilary Term last, to set aside the verdict for the plaintiff and for a new trial in this action, which was brought to recover the balance of an account for freight of a cargo of wool brought by the plaintiff from Bombay to England. It appeared that the defendant had agreed, by a charter-party, to pay 3*l.* 10*s.* per ton, but that, upon the wool being stowed in the usual part of the vessel, and some of the goods remaining unshipped, the captain assented to a proposition made by the defendant's agent, to put the remainder in the cabin, as there were no passengers. The plaintiff claimed 7*l.* 10*s.* per

freightage of the cabin goods, and on the defendant refusing to pay the amount, brought this action. On the trial before *Martin, B.*, at the sittings after Michaelmas Term last, the plaintiff obtained a verdict, whereupon this rule had been obtained.

*Cur. ad. vult.*

The Court said, that the defendant was not entitled under the charter-party to fill the cabins, and that he was therefore liable to the increased rate of freight for the extra accommodation. The rule was accordingly discharged.

### Court of Bankruptcy.

(Coram Mr. Commissioner Goulburn).

*Ason.* Oct. 25, 1852.

TRADER DEBTOR SUMMONS.—COSTS WHERE DEBT ADMITTED.

The Court refused an application for the al-

lowance of the costs of a creditor, who had summoned a trader under the 12 & 13 Vict. c. 106, s. 78, where the trader had admitted the debt.

*Kearsey* appeared on behalf of a creditor who had summoned a trader under sect. 73 of the 12 & 13 Vict. c. 106, and asked for the allowance of his costs. It appeared the trader had signed an admission of the debt.

*Neale*, for the trader, contra.

The Court refused the application, and said, that the trader had not resisted the process of the Court, and would, under sect. 81, commit an action of bankruptcy if he did not pay, secure, or compound the debt within seven days to the satisfaction of the creditor, who had therefore obtained what he sought for.

## ANALYTICAL DIGEST OF CASES, REPORTED IN ALL THE COURTS.

### Courts of Equity.

[For the previous Sections of the Digest in this Volume, see

*Privy Council*: Appeals, p. 17.

*House of Lords*: Appeals, p. 38.

### Courts of Equity:

Law of Attorneys and Solicitors, p. 125.

Contributories under the Winding-up Act, p. 143.

Law of Trustees, p. 165.

Lunacy, p. 185.

Law relating to Infants, p. 186.

Law relating to Charities, p. 203.

Appeals in Bankruptcy, p. 225.

Construction of Statutes, pp. 104, 286, 306, 325.

Law of Wills, pp. 346, 367, 386, 406.

Husband and Wife, p. 426, 446, 466.

Law of Property and Conveyancing, p. 485, 506.]

### LAW OF PROPERTY AND CONVEYANCING.

[Concluded from p. 508, ante.]

VENDOR AND PURCHASER.

11. *Contract of purchase.—Specific performance.—Parties.*—A party claiming an interest in a purchase by virtue of a contract, as having been entered into on his behalf, is a proper party to a suit by the vendor for the specific performance of the contract; otherwise, if he claim merely as a sub-purchaser: *Semble. Chadwick v. Maden*, 9 Hare, 188.

12. *Bill necessary to enforce performance of agreement for compromise of suit.*—The proper proceeding to enforce an agreement for the compromise of a suit, where such agreement goes beyond the ordinary range of the Court in such suit, or where the Court has, in enforcing the agreement, to adjudicate on equities distinct from the equity appearing on the record in the

cause, is, by bill for specific performance, and not by interlocutory application in the existing cause: *Semble. Askew v. Millington*, 9 Hare, 65.

Cases cited in the judgment: *Forsyth v. Manton*, 5 Madd. 78; *Wood v. Rowe*, 1 J. & W. 315, 337.

13. *Arbitration, agreement for reference.—Evidence.—Specific performance.*—Effect of an agreement for a reference to arbitration of a dispute between a vendor and purchaser as to certain terms, or alleged terms, of the contract, and of an award thereupon, in a suit subsequently instituted for the specific performance of the contract. *Clay v. Rufford*, 8 Hare, 290.

14. *Suit by purchaser from allottee of shares for account of purchase-money received on subsequent sale by him.—Where 9l. only recovered.*—A., an allottee of shares in a railway company, having executed the subscribers' agreement and parliamentary contract, obtained the scrip-certificate of his shares, which he sold, and such scrip-certificate, after passing through several hands, was bought by B. The Act incorporating the company was subsequently passed, and advertisements published, calling upon the holders of scrip-certificates to register their shares. No application having been made by B., then the holder and owner of the scrip-certificate, for registration of the shares which it represented, those shares were registered in the name of A., as the original subscriber, and the sealed certificate was delivered to him. A. immediately sold the shares, to avoid liability for calls; about a year elapsed, and two calls were made after such sale, and before any claim in respect of the shares was made by B.: *Held*, that, after the registration of the shares in the name of A., B. might have sued in equity for the transfer of the shares by A. to himself (B.), if the shares had not been sold, but had remained in A.'s name; and that it followed, that the Court had jurisdiction to

compel A. to account for the purchase-money received by him for the sale of the shares.

Although the sum recovered by the suit was only 9*l*.; yet it was *held*, that the suit was sustainable, inasmuch as the plaintiff, when he filed his bill, might have been justified in supposing that a larger sum would be recovered, and the defendant, who knew the amount, had not given any information respecting it. *Beckett v. Bilbrough*, 8 Hare, 188.

15. *Specific performance. — Agreement.* — A purchase was to be completed on the 25th of October. Before that day arrived, the purchaser, at the vendor's request, extended the time to the 5th of November. The title, however, was not completed on that day.

*Held*, that the purchaser was at liberty to abandon the contract. *Parlin v. Thorold*, 2 Sim. N. S. 1.

Case cited in the judgment: *Seton v. Slade*, 7 Ves. 265.

16. *Specific performance. — A. agreed to purchase part of an estate, on the faith of representations made to him by the vendor's agent, that the vendor would do certain acts on the remainder of the estate. Those acts, however, were not done; in consequence of which, the value of the land purchased was considerably diminished. A bill for specific performance, filed by persons claiming under the vendor, was dismissed with costs.* *Myers v. Watson*, 1 Sim. N. S., 523.

17. *Purchase under decree of Court. — Acceptance of title. — Possession given to purchaser, reserving to him a claim for compensation.* — A purchaser having bought, under a decree of the Court, property described as *tithe free*, raised a question on the title, which remained to be decided in the cause, whether the *tithe* passed under the will of the testator; and applied in the cause for leave to pay the whole of his purchase-money into Court, and that he might thereupon be let into possession of the purchased property, without prejudice to any application he might thereafter make for compensation, in case a title could not ultimately be made to the *tithe*s. The Court, considering that a claim to compensation only was asked to be reserved to the purchaser, made an order accordingly. *Man v. Ricketts*, 5 De G. & S. 116.

18. *Specific performance. — Wilful default.* — Houses described in the particulars as in the respective occupations of specified under-tenants, and as let to Messrs. J. "at the very low rent of 50*l*. per annum, who have received notice to quit" at a day past, but with a subsequent written permission to occupy on the same terms as before until the tenements are sold, were contracted to be sold subject to a condition, that the purchaser should be entitled to the rents from a specified day. On completion after that date, the purchaser claimed to be allowed a rent at the rate of 150*l*. a-year, the sum which the under-tenants paid the tenant, on the ground that, in allowing the tenant to continue in possession at the

rate of 50*l*. a year after the date of the contract for sale, the vendors were guilty of wilful default. On a claim by the vendors to enforce specific performance: *Held*, that, the purchaser not having required the vendors to turn the tenant out, they were not guilty of wilful default in allowing him to remain at the lesser rent; and specific performance was decreed, the plaintiffs accounting only for the lesser rent. *Crosse v. Duke of Beaufort*, 5 De G. & S. 7.

19. *Sale by order of the Court. — Reference to Master. — Title to accrued rents.* — Where a reference had been directed to inquire whether an offer for the purchase of leaseholds was beneficial, and ought to be accepted, and the Master reported in favour of the purchase: *Held*, that the purchasers were entitled to the rents from the date of the order of reference. *Cheetham v. Sturtevant*, 3 De G. & S. 468.

20. *Purchase under decree of the Court. — Title. — Reference to Master.* — A purchaser under a decree of leaseholds presented a petition to be discharged from his purchase, on the ground that a share in the property had been bequeathed upon trusts, and that the bequest appeared, by inference from the pleadings, to have been assented to; but that some of the *cestuis que trustent* were infants, and were not before the Court. The assent was disputed: *Held*, that the purchaser was not entitled at once to be discharged, but only to a reference to the Master as to title. *Whitfield v. Lequeuvre*, 3 De G. & S. 465.

21. *Sale under decree. — Petition for discharge. — Service on defendants.* — Defendants in a cause, where there has been a sale under a decree, ought to be served with the petition of a purchaser to be discharged from his purchase. *Sherwood v. Beveridge*, 3 De G. & S. 425; *Thrupp v. Same*, *ib*.

22. *Sale under decree. — Requisitions on title. — Receipt by trustee. — Parties. — Supplemental bill. — Discharge from purchase.* — In September, 1848, a purchaser bought under a decree, and by his requisitions on the title required a receipt to be given by a trustee having power to give receipts, but who was by mistake stated in the pleadings to have disclaimed, and was not a party to the cause. Afterwards, the purchaser required that the trustee should be brought before the Court by supplemental bill. In the course of the discussions on these subjects, it was objected by the purchaser that an additional *cestui que trust* ought to have been brought before the Court. The plaintiff acceded to this, and promised that the defects complained of should be supplied and remedied by a proper supplemental suit, and petition of re-hearing, in which (as all parties were amicable) a decree might be obtained in three weeks. This took place in March, 1849. The purchaser, in answer to the proposal, declined waiting any longer, and demanded back his deposit and costs. He then presented a petition to be discharged from his purchase; but before the petition came on to be heard, the defects in the suit had been supplied: *Held*, not a case for discharging the purchaser.

*Sherwood v. Beveridge*, 3 De G. & S. 425 ;  
*Thrupp v. Same*, ib.

23. *Specific performance.—Waiver of objection to title.*—An agreement was entered into for the purchase of a mansion-house and lands, admeasuring about 96 acres, comprised in particulars with the following statement :—“The whole is freehold, except about 8 acres, which is copyhold of the manor of C. (but undistinguished except as to not including any of the buildings).” Upon the abstract of title, one of the purchaser’s requisitions was, that, as the abstract did not show any connexion between the parcels described in the deeds abstracted and those set forth in the printed particulars, the vendors should establish the identity of the lands sold with those in the abstract. After some negotiation, but without compliance with this requisition, a supplemental agreement was entered into, by which possession was given up to the purchaser, he accepting the title subject to the vendors’ producing a “declaration of identity of the lands mentioned in the deed to those sold.” The vendors then produced a declaration, of which the purchaser’s counsel approved, in proof of the local identity of the parcels, but not distinguishing the freehold from the copyhold parts. Subsequently, the purchaser procured evidence, showing that it was highly probable that the mansion was built on the copyhold part of the property, and insisted that the vendor was bound to identify its site with the portion which was not copyhold. The vendors declined to furnish the necessary evidence. Upon a bill by them, to compel specific performance of the agreement : *Held*, that the purchaser was not entitled to require such evidence of identity ; and the Court decreed specific performance with a declaration to that effect. *Dawson v. Brinckman*, 3 De G. & S. 376.

24. *Specific performance of agreement with variation.*—A suit for the specific performance of an agreement with a variation, cannot be supported. *Nurse v. Lord Seymour*, 13 Beav. 254.

25. *Confirming report of best purchasers.—Payment into Court.—Irregularity.*—One notice of motion to confirm the Master’s report of best purchaser, and to pay the purchase-money into Court, is irregular. *Duffield v. Blues*, 13 Beav. 85.

26. *Re-sale.—Reversionary interest.—Discharging purchaser.*—A purchaser under the Court of a reversionary interest having made default in completing, a re-sale was ordered, and the purchaser was to make good any deficiency. Before such re-sale, it was discovered, that the reversionary interest had previously fallen into possession, the Court gave the purchaser four days to complete the purchase. *Robertson v. Skelton*, 13 Beav. 91.

27. *Doubtful title.—Specific performance.*—On a sale of real estate by a trustee under a will open to suspicion, as having been obtained by undue influence, the title was approved, but before the actual completion of the contract the

heir-at-law gave notice that he intended to dispute the will, and brought an action against the tenant for rent. The purchaser thereupon refused to complete, and a bill for specific performance was filed, but before it came to a hearing, the action brought by the heir was tried, and a verdict given against the heir : a reference as to title was then directed, and the Master having reported in favour of the title, a decree was made for specific performance. On appeal, however, by the purchaser, the Lord Chancellor (Lord Cottenham) ordered the case to stand over generally, with liberty for the vendor to take such proceedings for establishing the will as he should be advised. The vendor then instituted a suit against the heir, which resulted in the will being established. The Lord Chancellor (Lord Truro) thereupon confirmed the decree for specific performance, and directed the purchaser to pay interest from the time when under the contract the sale ought to have been completed, and also to pay the costs of the suit subsequently to the hearing, when the reference as to title was directed : his Lordship *held*, that at the time there had been such reasonable inquiry into the title as ought to have satisfied the purchaser, and that therefore the consequences of the further proceedings by which the will was established, both in reference to the costs of the suit for specific performance and the payment of interest, must fall on the purchaser.

The judgment of Lord Cottenham, in this case, 2 Phil. 619, observed upon. *Grove v. Bastard*, 1 De G., M’N. & G. 69.

Cases cited in the judgment : *Vancouver v. Bliss*, 11 Ves. 458 ; *Osbaldeston v. Askew*, 1 Russ. 160 ; *Seones v. Morrell*, 1 Beav. 251.

28. *Specific performance.—Indefinite agreement.—Enforcement of one moiety.*—One of two tenants in common in fee of lands containing mines of coal and iron, entered into a negotiation for a lease of minerals, and wrote a letter stating his willingness to grant a lease on the terms of a paper referred to in the letter. There were two papers, each of which in some respects answered the description in the letter. One of these purported to be terms for letting and taking coals, “&c.” under the lands in question, but contained no more definite description of the minerals which were the subject of it. In a suit by the proposed lessee for specific performance as to the moiety belonging to the tenant in common who had written the letter, *held* :

1. That the paper to which the letter referred was not sufficiently identified.

2. That even if, as the plaintiff contended, it was shown to be the above paper, its terms were too indefinite to be capable of being enforced specifically.

3. That the contract being for a lease of the entirety, and the defendant not having been shown to have made any misrepresentation as to his title or otherwise, it could not have been enforced against him as to one moiety only. *Price v. Griffith*, 1 De G., M’N. & G. 80.

# The Legal Observer.

SUPPLEMENT TO VOLUME XLIV.

## ANALYTICAL DIGEST OF CASES.

### Courts of Equity.

#### I. ADMINISTRATION OF ASSETS.—DEBTOR AND CREDITOR.

1. *Composition deed.*—*Specific performance.*—*Statute of Frauds.*—*W. D.*, by indenture, agreed to guarantee a certain composition to all the creditors of *I. D.* who should before a fixed day execute a release of their debts. The plaintiff, who was a creditor of *I. D.*, did not execute by the time named, but insisted that this delay had taken place in consequence of an arrangement entered into between him and the agent of *W. D.*, the effect of which was to bind the plaintiff to accept the composition, but to allow him to postpone his execution of the release: *Held*, dismissing a bill filed by the plaintiff against *W. D.* for specific performance of the agreement to pay the composition, that there was no evidence that the agent of *W. D.* had authority to enter into any new agreement; that if such authority had been proved, the agreement being within the 4th sect. of the Statute of Frauds, any alteration in its terms must have been evidenced by writing; that the condition in the original agreement not having been performed by the plaintiff, the agreement never took effect so far as he was concerned, and that, in the absence of fraud, no parol agreement could be substituted. *Emmett v. Dewhurst*, 3 M.N. & G. 587.

Cases cited in the judgment: *Goss v. Lord Nugent*, 5 B. & Ad. 58; *Stowell v. Robinson*, 3 Bing. N. C. 928; *Marshall v. Lynn*, 6 M. & W. 109; *Stead v. Dawber*, 2 Per. & D. 447, overruling *Cuff v. Penn*, 1 M. & S. 21.

2. *Administration of assets.*—Two creditors' suits were instituted for the administration of the same estate, one of which asked for an account of the profits made by the personal representative of the debtor in carrying on the business after his death. In the other suit, a decree had been obtained for taking the ordinary accounts only. A motion to stay proceedings in the first suit was refused. *Underwood v. Jee*, 1 H. & T. 379; 1 M.N. & G. 276; *Smith v. Jee*, 1 M.N. & G. 276.

3. *Voluntary settlement.*—To set aside a voluntary settlement at the suit of creditors, it is not necessary to show the actual insolvency of the settlor at the date of the settlement, but the mere existence of debt at that time will not be sufficient, *per se*, to render it void.

Observations on the authorities, commencing with *Lord Townshend v. Windham*, 2 Ves. S. 10, and ending with *Townsend v. Westacott*, 2 Beav. 344. *Scarv v. Soulbey*, 1 H. & T. 426; 1 M.N. & G. 364.

4. *Voluntary settlement.*—A testator, four years previously to his decease, assigned two policies of assurance effected by him on his life, for the benefit of a female with whom he had cohabited, and his four children by her. There was no allegation in the bill, which was filed on behalf of creditors to set

aside the assignment, that the plaintiff's debt was due at the time of the settlement, and there was no evidence of the state of the settlor's affairs, or of his being indebted at the date of the assignment, except an I. O. U. for 200*l.*, produced by the plaintiff: *Held*, reversing the decree of the Court below, declaring the assignment void against creditors, that the proper course was, to direct inquiries before the Master as to the debts of the testator at the date of the assignment, and the amount of his estate and effects at the same time. *Scarv v. Soulbey*, 1 H. & T. 426; 1 M.N. & G. 364.

5. *Consignee of debtor.*—*Appropriation of funds.*—*Equitable assignment.*—When mercantile correspondence respecting the appropriation of funds in the hands of a consignee belonging to the debtor, does not constitute a legal contract on the part of the consignee to apply the funds in payment of the debt of the creditor; whether the creditor may still support a claim to the funds on the ground of there being an equitable assignment—*Quære. Malcolm v. Scott*, 2 H. & T. 440.

6. *Equitable mortgage.*—*Specialty creditor.*—A bond creditor, claiming also an equitable mortgage on real estate, filed his bill for foreclosure, and in aid, for the administration of the personal estate, against the executors and the parties entitled to the mortgaged estate. He failed in proof of the equitable mortgage: *Held*, that he was not, on such a record, entitled to a decree, as a specialty creditor, for the administration of the real estate. *Chapman v. Chapman*, 13 Beav. 308.

7. *Administration bond.*—*Creditors' suit.*—*Surety.*—*Jurisdiction.*—A suit cannot be maintained in this Court by a party interested in the intestate's estate upon an administration bond, where no special reasons are shown why the proceeding is not taken in the name of the Ordinary.

*Held*, also, that an order of the Ecclesiastical Court to attend with the bond in Chancery as may be requisite and necessary for the furtherance of justice, is not a sufficient reason. *Bolton v. Powell*, 14 Beav. 275; *Howard v. Earle*, *ib.*

Cases cited in the judgment: *Parker v. Young*, 6 Beav. 264; *Hammond v. Messenger*, 9 Sim. 185; *Barker v. Birch*, 1 De G. & S. 376.

8. *Voluntary settlement.*—A creditor, who seeks to set aside a voluntary settlement made by his debtor, need not prove that the settlor was either insolvent or in embarrassed circumstances: it is enough for him to prove that the settlor was indebted at the date of the settlement. *Scarv v. Soulbey*, 16 Sim. 344.

Case cited in the judgment: *Lord Townshend v. Windham*, 2 Ves. l.

9. *Voluntary settlement.*—It is not sufficient for a creditor who seeks to set aside a voluntary settlement made by his debtor, to show merely that the

settlor was indebted when he executed the settlement; but it is not requisite for him to show that the settlor was insolvent at that time. *Searf v. Souby*, 16 Sim. 481.

Cases cited in the judgment: *Richardson v. Smallwood*, Jac. 552; *Townsend v. Westcott*, 2 Beav. 340.

10. *Trust for payment of debts.*—A., being greatly in debt, he and his father, in pursuance of an arrangement between themselves, conveyed estates of which they were seised for life and in remainder respectively, to trustees in trust to sell for payment of A.'s debts; but no creditor was to be entitled to the benefit of the trust, unless the trustees, after having investigated and allowed his debt, should give him a debenture for it. The trustees gave debentures to three of the creditors; after which one of the trustees instituted a suit against his co-trustees, &c., on the hearing of which the Master was directed to take an account of all A.'s debts due at the date of the conveyance, and to advertise for his creditors to prove their debts by a day to be named or to be excluded from the benefit of the decree. The plaintiff and several other creditors of A. proved their debts under the decree; but, nevertheless, the Court, on the hearing for further directions, held, that none of them, except the plaintiff and the debenture creditors, were entitled to the benefit of the trust. *Dwyer v. Maudesley*, 16 Sim. 511.

11. *Jurisdiction.*—A. having gone abroad and left his wife unprovided for, the plaintiff lent her money to purchase necessaries, and she applied it accordingly.

Held, that the plaintiff could not sue A. for the money in a Court of Equity. *May v. Shey*, 16 Sim. 588.

12. *Staying proceedings in a suit.*—Two creditors' bills were filed. The first alleged that the defendant (who was the debtor's widow and personal representative) had carried on the debtor's trade since his decease, and prayed for an account of the profits. The second prayed, merely, for the common relief. The Court held, that there was an important difference in favour of the first suit, and refused to stay the proceedings in it, notwithstanding a decree had been obtained in the second. *Underwood v. Jee*; *Smith v. Jee*, 17 Sim. 119.

13. *Executors and administrators.—Retainer.*—*Debt.*—One of the creditors of an insolvent died intestate, leaving the insolvent one of his next of kin.

Held, that the administrators of the creditor were not entitled to retain the debt, out of the insolvent's distributive share of the creditor's estate. *Bell v. Bell*, 17 Sim. 127.

Case cited in the judgment: *Cherry v. Boulton*, 4 Myl. & Cr. 442.

14. *Voluntary deed.*—A. conveyed all his property to three of his creditors, in trust to pay the debts due from him to themselves and to his other creditors who should execute the deed. The trustees and some of the other creditors executed the deed, but with notice that B. had a demand upon A., and, was about to enforce it. Afterwards B. filed a bill, against A. and the trustees, to set aside the deed, on the ground that it was a mere voluntary deed of agency. The Court, at the hearing, dismissed the bill with costs. *Mackinnon v. Stewart*, 1 Sim. N. S. 76.

15. *Equity of redemption.*—The equity of redemption of a mortgage in fee, is made legal assets by 5 & 4 Wm. 4, c. 104. *Foster v. Handley*, 1 Sim. N. S. 299.

16. *Voluntary deed.*—A voluntary assignee of a debt due from a person deceased cannot maintain

a suit for the administration of the deceased's estate. *Sevell v. Mossy*, 2 Sim. N. S. 189.

17. *Administration of assets.*—Payment of a legacy on an erroneous construction of the will, not *malâ fide*, not an admission of assets on the true construction. *Clark v. Bates*, 2 De G. & S. 203.

18. *Proof of joint debt against estate of pre-deceased debtor.*—Where an intestate and another had mortgaged a leasehold estate of which they were tenants in common, to secure payments in respect of shares held by them in a benefit building society, and had entered into a joint covenant to make payments, but were not partners, and had no joint estate, and the intestate's debtor was sworn to be in insolvent circumstances: Held, that the covenantor was not entitled to prove as a specialty creditor, under a decree for the administration of the intestate's estate. *Crosley v. Dobson*, 2 De G. & S. 486.

Cases cited in the judgment: *Cowell v. Sikes*, 3 Russ. 121; *Sumner v. Powell*, 2 Mer. 30.

19. *Voluntary settlement.*—A debtor being possessed of a policy of assurance on his life for 500*l.*, in October, 1837, assigned the policy and sum assured to one of his creditors, as a security for 100*l.*, with a declaration constituting the creditor, after securing his own debt, a trustee for M. At the date of this transaction the debtor was indebted to other persons, and continued indebted to some of them up to the time of his death, and died intestate and insolvent in December, 1837. The assignee of the policy received the 500*l.*, and after retaining the amount due to himself, paid the balance into Court under the Trustee Relief Act, 1850: Held, that the trust in favour of M. was void as against the creditors of the debtor at the time and who continued so up to the debtor's death; but that, subject thereto, it was a good declaration of trust in favour of M. *In re Magnusley's Trust*, 5 De G. & S. 1.

20. *Real or Personal estate.—Conversion by deed.*—*Conveyance in trust.*—Conveyance of the equity of redemption of real estate to trustees, for sale, for the benefit of the creditors of the author of the deed, and upon trust, if there should be any surplus, to pay the same to him, his executors, administrators, and assigns, to and for his and their own absolute use and benefit: Held, to be a conversion of the real estate into personalty, as between the real and personal representatives of the author.

Held, also, that the ultimate surplus of the proceeds of the real estate being reserved to the author of the deed, and the deed not being revoked, and no attempt having been made to revoke it, it was not material as between the real and personal representatives of the author, whether the deed was or was not revocable.

That the question, whether the surplus proceeds of the trust property belonged to the real or personal representative, was not affected by the state—whether of realty or personalty—in which such surplus was found, although the state of the property might affect the character in which such surplus would go to the one or the other of such representatives. *Griffith v. Ricketts*, 7 Hare, 299; *Same v. Sevell*, ib. 299.

21. *Conveyance for benefit of creditors not revocable.*—A conveyance for the benefit of creditors, held not to be revocable by the author, as against any creditors with whom such communications had taken place, as would give them an interest under the deed, but at the utmost to be revocable only as to the surplus proceeds of the estate, after satisfying such creditors; and, whether the deed was revocable

at the option of the author, as to such surplus,—*quære*. *Griffith v. Ricketts*, 7 Hare, 306; *Same v. Lunell*, ib. 306.

Cases cited in the judgment: *Bill v. Cureton*, 2 Myl. & K. 503; *Wilding v. Richards*, 1 Coll. 655; *Ellison v. Ellison*, 6 Ves. 556; *Exparte Pye*, *Exparte Dubost*, 18 Ves. 140; *Pulvertoft v. Pulvertoft*, 18 Ves. 84.

22. *Policy of insurance as security.—Default in payment of premium*.—The defendant, a creditor, agreed that judgment should not be entered up against the plaintiff, his debtor, upon a warrant of attorney, unless default should be made in the payment of the premiums of a policy of life insurance, which was effected to secure the debt; and that payment of the debt should not be required so long as the policy was kept on foot. The plaintiff permitted the time for payment of the premium to expire, and four days afterwards the defendant paid the premium, and procured the policy to be revived. The Court refused to relieve the plaintiff against the consequence of his default in payment of the premium, and dismissed a bill brought by him to restrain the defendant from suing out execution against the plaintiff on the judgment. *Winthrop v. Murray*, 8 Hare, 214.

23. *Voluntary assignments containing covenants for further assurance by testator*.—The Court, in the administration of assets, enforced against the estate voluntary assignments, made by the testator, of annuities, mortgage debts, and policies of assurance, of which assignments no notice had been given in his lifetime to the mortgagors or grantors, such assignments containing covenants for further assurance by the testator, his executors, and administrators. *Cox v. Barnard*, 8 Hare, 310.

24. *Trust.—Priority.—Merger*.—A judgment creditor who had executed a deed, whereby the real and personal estate of the debtor were conveyed to trustees for the benefit of such of his creditors as should execute the deed, assigned his judgment to such trustees: *Held*, that the trustees could not be considered as owners of the trust estate, so that the assignment by the judgment creditor would have the effect of merging the judgment.

That the judgment creditor having assigned his judgment to the trustees of a creditors' deed, in trust for the benefit of the creditors who had executed the deed (of whom he was himself one), was entitled to sue, on behalf of himself and all such other creditors, for the establishment of their rights in respect of the trust estate and the execution of the trusts. *Squire v. Ford*, 9 Hare, 47.

25. *Release.—Construction of deed of trust for benefit of creditors*.—By a deed conveying the real and personal estate of a debtor to trustees for the benefit of his creditors, the creditors executing the deed covenanted that it should operate and endure, and might be pleaded in bar, as a good and effectual release and discharge of all and all manner of actions, suits, bills, bonds, writings, obligations, debts, duties, judgments, extents, executions, claims, and demands, both at Law and in Equity, which they or any of them had or might have against the debtor or his estate or effects, for or by reason of all or any of the debts or engagements to them respectively due or owing by him: such covenant not to destroy any mortgage, pledge, lien, or other specific security which any creditor possessed: *Held*, upon the construction of the entire deed, that such general words had not the effect of releasing a judgment previously obtained by one of the creditors who executed the deed, so as to affect the priority of the creditor as between himself and a judgment

creditor who was not a party to the deed, or so as to preclude the judgment creditor who executed the deed from enforcing the right which the judgment gave him as against the estate vested in the trustees. *Squire v. Ford*, 9 Hare, 47.

Cases cited in the judgment: *Solly v. Forbes*, 2 B. & B. 38.

See *Annuities*, 3, 4, 14; *Executors and Trustees*, 3, 5, 20.

## II. ANNUITIES.

1. Where an annuity was charged on lands, and secured by the personal covenant of the grantor: *Held*, that six years was the limitation of the arrears which could be recovered, and that this period was to be reckoned from the time when the claim was made in the suit under which the incumbrance was established. *Hunter v. Nockolds*, 1 M'N. & G. 640.

2. *Sale under power*.—Where the sale of property takes place under a power contained in an annuity deed, the annuitant is a trustee for the purpose of the sale, and neither he nor his attorney or agent is qualified to become the purchaser. *In re Bloyds Trust*, 2 H. & T. 140; 1 M'N. & G. 488.

Cases cited in the judgment: *Downes v. Gravesbrook*, 3 Mer. 200; *Woodhouse v. Meredith*, 1 J. & W. 204.

3. *Non-exoneration of general personal estate*.—A testator charged his freehold hereditaments and money in the funds with an annuity due from him on bond to A., and, subject to the payment of the said annuity, he devised and bequeathed the same to B. He then gave the residue of his real and personal estate, "subject, as to his personal estate, to the payment of his debts and legacies," to C.: *Held*, that the general personal estate was not exonerated from the payment of this annuity. *Quennell v. Turner*, 13 Beav. 240.

4. *Charge of funds*.—A testator charged all the "moneys standing in his name in the public funds," with the payment of an annuity. He had no money standing in his own name, but he was entitled to interests in funds standing in the names of trustees: *Held*, that such interests were charged with the annuity. *Quennell v. Turner*, 13 Beav. 240.

5. *Receiver—Right of grantor to disclaim*.—In a suit relating to two annuities secured on real estate, and to which the grantor was not a party, a receiver was appointed "of the incomes of the outstanding trust property in the pleadings mentioned." The receiver entered and continued in possession of the real estate, for six years. The Court refused to restrain the grantor by injunction from disclaiming on the tenants. *Crow v. Wood*, 13 Beav. 271; *Whitehead v. Same*, ib.

6. *Gift for life unless gift enlarged by will*.—Where there is a simple bequest of an annuity, it implies no more than a gift for life, unless there is something else in the will to enlarge the gift. *Potter v. Baker*, 13 Beav. 273.

7. *Will*.—A testator directed the investment of his property in the funds, and bequeathed to A. B. 50*l.* per year, for her and her three children; and, after her decease, the "money" to be paid to each of them, as they attain the age of 21; but if either of them died, to be paid to the survivors: *Held*, upon the context, that this gave not a life annuity, but such a sum in the funds as would produce 50*l.* a year. *Potter v. Baker*, 13 Beav. 273.

8. *Interest*.—After the death of a person who had covenanted to pay an annuity, a suit was instituted for the administration of his assets, pending which, the annuity became in arrear. The Court refused



to allow interest on the arrears. *Jenkins v. Briant*, 16 Sim. 272.

Case cited in the judgment: *Booth v. Leycester*, 3 Myl. & C. 459.

9. *Apportionment*.—Testator, after directing a fund to be formed by investing the rents of his estates in the purchase of Bank Annuities, charged it with the payment of 150*l.* a year to his wife during her life: *Held*, that, though the 150*l.* was not a continuing payment, the executors of the wife, who outlived the testator between seven and eight years, were entitled to a proportionate part of the 150*l.* a-year for the interval between the death of the wife and the last preceding yearly day of payment. *Carter v. Taggart*, 16 Sim. 447.

10. *Appropriation of sum to meet*.—An annuitant, who has established his right to an annuity in a proceeding directed by the Court for trying such right, may immediately apply for the appropriation of the portion of the fund necessary for its payment, *semble*. *Taylor v. Taylor*, 8 Hare, 120.

11. *Interest on arrears*.—Where secured by term of years.—The claim of an annuitant to interest is not affected by the circumstance that the annuity is secured by a term of years, of which he is himself trustee, if his title to the annuity, in the circumstances of the case, is one of sufficient doubt to require the direction of the Court, *semble*. *Taylor v. Taylor*, 8 Hare, 120.

12. *Interest on arrears*.—Payment out of fund.—Setting apart sum out of general estate.—In order to entitle an annuitant, whose annuity is payable from a fund which has been brought into Court, to any profit which may have been made on the investment of the arrears of his annuity, he should procure the arrears to be set apart and distinguished from the general estate. *Taylor v. Taylor*, 8 Hare, 120.

13. *Interest on arrears*.—Profit by investment of arrear.—Interest not given on the arrears of an annuity, unpaid for several years during the progress of the cause, although the suit was instituted by, and a receiver appointed on the application of, the residuary legatee—and the surplus income out of which the annuity was payable was brought into Court, and made productive. *Taylor v. Taylor*, 8 Hare, 120.

Case cited in the judgment: *Berrington v. Evans*, Young, 276.

14. *Apportionable between real and personal estates*.—An annuity bequeathed by will, and directed to be paid out of a moiety of the rents, issues, profits, dividends, interest, and proceeds of the real and personal estate of the testator, after the expiration of a life interest therein: *Held*, not to be primarily payable out of the personal estate of the testator, but to be apportionable between the real and personal estates. *Falconer v. Grace*, 9 Hare, 282.

### III. DEEDS, CONSTRUCTION OF.

1. *Settlement*.—Appointment to executors and administrators.—By a post-nuptial settlement, certain moneys to become payable on three policies of insurance on the life of *R. M.*, were vested in trust for *B. M.* for life, and after her death, upon trust for the appointees of *R. M.* In 1821, *R. M.* appointed the moneys so to become payable to his executors and administrators. By an order, in a suit instituted for the purpose of carrying into effect the trusts of the settlement, it was ordered that the trustees should relinquish the policies for such a sum as might be obtainable for the same from the insurance company, and that the moneys so realised should be invested, and the dividends accumulated during the joint lives of *R. M.* and *B. M.* *B. M.* died in 1847. On a question being then raised be-

tween the children of the marriage and the assignees in insolvency, and in bankruptcy of *R. M.*: *Held*, that the effect of the appointment was to make the property part of the personal estate of *R. M.* *Mackenzie v. Mackenzie*, 3 M.N. & G. 559.

2. *Settlement limiting property to executor or administrator of settlor*.—The effect of a settlement by deed, limiting property to the executor or administrator of the settlor, is to make such property subject to the disposition of the settlor by will, or to be dealt with under the Statute of Distributions. *Mackenzie v. Mackenzie*, 3 M.N. & G. 559.

Cases cited in the judgment: *Attorney-General v. Malkin*, 2 Phill. 64; *Daniel v. Dudley*, 1 Phill. 1; *Hames v. Hames*, 2 Keen. 646; *Palin v. Hills*, 1 Myl. & K. 470; *Collier v. Squire*, 3 Russ. 467; *Holloway v. Clarkson*, 2 Hare, 521; *Bulmer v. Jay*, 3 Myl. & K. 197; *Sanders v. Franks*, 2 Madd. 147.

3. *Donatio mortis causa*.—Reverter on donor surviving.—Lunatic.—The plaintiff, being possessed of shares in a public company, when in a state of extreme sickness transferred the shares into the name of the defendant; the plaintiff having recovered from his sickness, but having subsequently become lunatic, a bill was filed in his name by his committee, to have the defendant declared a trustee of the shares: *Held*, that as the plaintiff had survived the sickness during which the transfer was made, the gift could not operate as a *donatio mortis causa*, and it appearing that the gift had been received by the defendant upon the distinct understanding that it was to be absolute only in the event of the death of the plaintiff: *Held*, that the defendant must be considered as trustee of the shares for the plaintiff. *Staniland v. Willott*, 3 M.N. & G. 664.

Cases cited in the judgment: *Tait v. Hilbert*, 2 Ves J. 111; *Gardner v. Parker*, 3 Madd. 185; *Edwards v. Jones*, 1 Myl. & Cr. 235.

4. *Setting aside conveyance*.—Sale after decree.—Payment of money into Court pending appeal.—By a decree at the Rolls, the plaintiff had been declared entitled to real estate, which had been formerly conveyed by him to some of the defendants, under circumstances which induced the Court to set aside the conveyance. None of the parties wished to interfere with some sales which had been since made of parts of the estate, but the amount of the purchase-money for them was ordered to be paid to the plaintiff. The decision was appealed from, and upon motion to stay proceedings pending the appeal, upon payment into Court of the amount of the purchase-money, the Court made the order, not on account of the alleged poverty of the plaintiff, but on the ground that the substitution of the money for the estate was an accident arising from the sale of part of the property, and that the plaintiff would be in the same position as if none of the estates had been sold. *Sturge v. Sturge*, 2 H. & T. 469.

5. *Inconsistent clauses*.—Principles on which the Court proceeds in putting a construction upon inconsistent clauses in a settlement.

Where a deed contains inconsistent clauses, the Court very reluctantly rejects one altogether; and never, unless it is absolutely impossible to reconcile the inconsistencies. *Bush v. Watkins*, 14 Beav. 425.

9. *Immoral consideration*.—*Turpis contractus*.—*Particeps criminis*.—The plaintiff sought to be relieved from a deed by which he had covenanted to pay an annuity to the defendant, a female, on the ground that the consideration for it was a promise made to him, by the defendant, to live with him as his mistress. The defendant demurred for want of equity. But the demurrer was overruled, because

it did not appear that the plaintiff had availed himself of the promise. *Sims v. Eley*, 17 Sim. 1.

7. *Voluntary deed.—Complete alienation.*—Residuary estate consisting of money in the funds, was bequeathed to a mother and daughter, in trust for the mother for life, and afterwards for the daughter absolutely. By a settlement made in contemplation of the daughter's marriage, the daughter assigned her interest under the will to trustees, upon trust for the issue of the intended marriage, and for a niece of the daughter and the issue of the niece. The daughter's husband died soon after the marriage, of which there was no issue. The mother was not a party to the settlement, but had notice of it before the husband's death.

*Held*, that even if the settlement was voluntary as regarded the trusts in favour of the niece, it was a complete alienation, so as to be capable of enforcement, at the instance of the trustees of the settlement against the daughter, and the trustees of another settlement, which she made upon a second marriage, inconsistent with the former settlement.

Whether the first settlement was voluntary as regarded the trust for the niece, *quære*. *Kekewich v. Manning*, 1 De G. & S. 176.

Cases cited in the judgment: *Ellison v. Ellison*, 6 Ves. 656; *Cadogan v. Sloane*, Sug. V. & P. 1119 (11th edit.); *Fortescue v. Barnett*, 3 Myl. & K. 36; *Wheatley v. Purr*, 1 Keen, 551; *Blakeley v. Brady*, 2 Dr. & Wash. 311.

8. *Setting aside deed.—Disclaimer and submission.*—A bill was brought to set aside a deed of 1809, on the ground that the plaintiff, the grantor, was of unsound mind. The plaintiff was, by inquisition, found to have been lunatic, without lucid intervals, from 1796. The defendants alleged, that, by a deed of 1805, the lunatic had settled the estate for himself and wife for their lives, and for the benefit of their children in remainder. The children were made parties to the suit, and disclaimed, and offered to convey any interest they might have as the Court should direct: *Held*, that this disclaimer and submission did not re-invest in the lunatic the interest which he would have had if the deed of 1805 had not existed, or entitle him to the relief which he might have had if the deed of 1805 had not been made; but, in confining the decree to the interest which had been reserved to the lunatic, the Court declared that it should be without prejudice to the rights of the children. *Price v. Berrington*, 7 Hare, 394.

9. *Setting aside appointment.—Tenant for life and remainder-man.*—In a suit to set aside an appointment, on the ground of the unsoundness of mind of the appointor, who was the tenant for life of the estate, parties who would be entitled in remainder in default of appointment, cannot, either by joining as plaintiffs in a supplemental suit, or by offering in their answer to convey their interests for the plaintiff's benefit, enable the plaintiff to sustain the suit in respect of any relief beyond the duration of his own life estate. *Price v. Berrington*, 7 Hare, 394.

10. *Setting aside conveyance for lunacy and fraud.—Tenant for life and personal representative.—Account of rents and profits against parties in possession.*—A bill to set aside, on the ground of lunacy and fraud, a conveyance of an estate by a party claiming the fee simple. The lunacy was established, but it appeared the plaintiff was only entitled to a life estate in the property: *Held*, that the plaintiff (and his personal representative after his death) was entitled to an account of the rents and profits during the life of the plaintiff, as against the parties in pos-

session under the conveyance. *Price v. Berrington*, 7 Hare, 394.

11. *Setting aside conveyance.—Misrepresentation of true facts.*—The defendant became acquainted with the fact, that, under the will of a relation of the plaintiff, an estate vested in trustees was settled (after a subsisting life estate, and upon the failure of issue of the tenant for life, who had then no issue), to the plaintiff for life, with remainder to his issue in tail, with remainders over, and an ultimate remainder to the plaintiff's brother (then deceased), and his heirs and assigns; the defendant having communicated to the plaintiff (who was then supposed to be and was in fact, the heir-at-law of his brother) the existence of such a will, in a long correspondence produced an impression on the mind of the plaintiff, contrary to the true facts, that the plaintiff's interests under the will were precarious; that they were endangered by the conduct of the trustees and tenant for life, and could not be established without difficulty, delay, and litigation; and the defendant obtained a conveyance of a moiety of the estate from the plaintiff, the defendant indemnifying the plaintiff against the costs of recovering the property. The Court set aside the conveyance; and *held*, that it was not an objection to this relief, that the plaintiff had, throughout, the means, equally with the defendant, of knowing what his rights were, and of obtaining complete advice respecting them. *Reynell v. Sprye*, 8 Hare, 222; *Sprye v. Reynell*, *ib.*

Cases cited in the judgment: *Cox v. Allingham*, Jac. 337; *Hood v. Pimm*, 4 Sim. 101; *Martin v. Whicheo*, Cr. & Ph. 257; *Huguenin v. Baseley*, 14 Ves. 289.

12. *Conveyance setting aside.—False representation of facts.*—Where a conveyance of a moiety of an estate was made by A. to B., upon a representation first made to A. by B., that such moiety was to be the remuneration of the lawyer for recovering the estate, and, upon a subsequent representation, that such moiety had been made over to him, B., the circumstance that such representations as to the remuneration for professional services, and as to the transfer to B., were untrue, was *held* to be a ground for setting aside the conveyance. *Reynell v. Sprye*, 8 Hare, 222; *Sprye v. Reynell*, *ib.*

13. *Setting aside contract.—Sale of moiety where conveyance set aside as to other.*—A conveyance of one moiety of an estate being set aside, a contract for the sale of the other moiety to the same party on the previous conveyance of the first moiety, cannot be supported. *Reynell v. Sprye*, 8 Hare, 222; *Sprye v. Reynell*, *ib.*

14. *Setting aside conveyance.—Heir-at-law.—Evidence of heirship.—Devisee.*—The defendant having taken a conveyance in fee from the plaintiff of an estate, which the plaintiff would not be able so to convey except as heir-at-law of his deceased brother, and a suit having been brought by the plaintiff against the defendant to set aside the conveyance on the ground of fraud, and continued by the devisee of the plaintiff after his decease, the absence of proof that the plaintiff was such heir-at-law, and therefore that his devisee had any interest in the estate, was *held* not to be an objection to a suit, which it was open to the defendant to raise. *Reynell v. Sprye*, 8 Hare, 222; *Sprye v. Reynell*, *ib.*

See *Administration of Assets*, 20, 25; *Executors and Trustees*, 10, 11; *Partnership*, 10, 16; *Patent*, 2.

#### IV. EXECUTORS AND TRUSTEES.

1. *Improper investment procured by cestui que trust.*—Where one cestui que trust procures the trust-

money to be laid out improperly, and part of it is consequently lost, the other *cestui que trust* are entitled, as against him, in a suit properly constituted for that purpose, to have their share of the trust money made good out of his share of that which is ultimately recovered. But if the bill prays relief against the trustees only, the liability of the share of that *cestui que trust* cannot be enforced against him. *Phillipson v. Gatty*, 2 H. & T. 459; *Gatty v. Phillipson*, ib.

2. *Sale of iron.—Mortgages.—Ownership in vendor.*—*A.*, who sold 500 tons of iron stacked on his wharf to *B.*, in consideration of a bill accepted by a third party, gave an acknowledgment engaging to deliver it to the bearer, he (*A.*) "having been paid for the same." *B.* mortgaged the iron, and the bill having been dishonoured, *A.* refused to deliver the iron. The mortgagee proceeded in equity to make *A.* responsible for the iron: *Held*, that *A.* had no ownership or property in the iron so stacked, and was a trustee, and therefore a demurrer for want of equity was overruled. *Pooley v. Budd*, 14 Beav. 34.

Cases cited in the judgment: *Horncastle v. Farren*, 3 B. & Ald. 497; *Bunney v. Poyntz*, 4 B. & Ad. 568.

3. *Sole executrix and tenant for life.—Liability for interest.*—*A. S.*, the sole executrix and tenant for life, died, having 12,500*l.* of the assets in her hands. Her executors admitted assets: *Held*, that in the absence of any further proof they were not liable for interest. *Davenport v. Stafford*, 14 Beav. 319; *Frisby v. Same*, ib.; *Charlesworth v. Manners*, ib.

Case cited in the judgment; *Phillipson v. Munnings*, 2 Myl. & C. 309.

4. *Liability personally for delay in sale.—Executors* were ordered to sell canal shares before the 14th of July, 1833. They did not sell them until 1836, and a great loss occurred: *Held*, that they were personally liable for the loss. *Davenport v. Stafford*, 14 Beav. 319; *Frisby v. Same*, ib.; *Charlesworth v. Manners*, ib.

5. *Loan to executor.—Mortgage of assets.*—When loans are made to an executor upon his personal security, without any security or contract for a security upon the assets being made at the time, and afterwards a security on the assets is given, the Court will not assume that the loan was for the purposes of the estate, but will direct an inquiry whether it was so applied. *Miles v. Durnford*, 2 Sim. N. S. 234.

6. *Decree for wilful default.—Liability to pay interest on balances.*—In an administration suit, the pleadings raised questions of wilful default, and liability to pay interest on balances in hand against executors; but the decree taken at the original hearing neither contained any declaration against the executors, nor any inquiries as to wilful default, but was merely a decree for the common account of what had been received: *Held*, that the Court could not, on further directions, make any decree for wilful default; but that the question of interest on balances in hand was still open.

General principle on which the Court proceeds in making declarations in directing inquiries as to wilful default, and interest on balances in the hands of executors or trustees.

The balances remaining in the hands of the executors were very small. The testatrix died in 1833. The plaintiff became a bankrupt in 1829; and in 1834 procured his assignees to re-assign all his interest to him. Neither he nor his assignees, up to that time, had made any application for payment. In 1835, the plaintiff filed his bill for an account, and allowed it to be dismissed for want of prosecution in 1840; in 1842, he filed the present bill, and

asked for interest on balances: *Held*, that under these circumstances, he was not entitled to it. *Jones v. Morrell*, 2 Sim. N. S. 241.

7. *Advance to "owners" of copyhold estate on mortgage by trustees of settlement, with power to invest in real securities.—Breach of trust.*—By an antenuptial settlement, the trustees of it were empowered to sell out the trust fund, and invest the proceeds upon (among others) real securities. By a contemporaneous memorandum indorsed on the settlement, the settlers requested the trustees to advance the trust monies to the owners of a copyhold estate, called Vauxhall Gardens, upon mortgage, as first, second, or third mortgages: *Held*, that the word "owners" meant owners at the date of the settlement by memorandum; and that an advance to them without security, and the subsequent acceptance of a mortgage, with a joint and several covenant, from two of the three owners, after the retirement of the third, was a breach of trust. *Fowler v. Reynal*, 2 De G. & S. 749.

8. *Trustees surviving.—Liability to account.—Duty of us to trust fund.*—Where one of several trustees has died, the *cestui que trust* may generally sue the surviving trustees for an account, without making the representatives of the deceased trustee a party, it being the duty of the surviving trustees to place the fund in a proper position, and recover from the estate of the deceased any portion of the trust money that may have remained in his hands.—*Sembla. Beattie v. Johnstone*, 8 Hare, 169.

9. *Right of trustees to enter into evidence as to respective rights of the cestui que trust.*—In a suit for the administration of a trust, where the parties beneficially interested are before the Court, the trustees, although plaintiffs, ought not to enter into evidence as to facts relating to or showing the respective rights of the *cestui que trust*. *Girdlestone v. Creed*, 8 Hare, 205.

10. *Cestui que trust.—Setting aside conveyance.*—Where property is in the hands of trustees for the parties entitled to it, and there is no adverse claim after the death of the parties in possession, a communication to one of the *cestui que trust* in remainder of his interest in the property is not a consideration upon which a conveyance of a portion of the property can be sustained, as the sale of a secret; for, in such a case, the disclosure is a nullity. *Reynell v. Sprye*, 8 Hare, 222; *Sprye v. Reynell*, ib.

11. *Discretion to raise charge on estates.—Felling timber.*—Limitation of estates to successive tenants for life, with remainders in tail, subject to a term vested in trustees, the trusts of which were, in the first place, by cutting and selling timber of full growth, or by demising, mortgaging, or selling the estate (except the mansion-house), for all or any part of the term, or by all or any of the said ways, or any other reasonable ways, to raise 30,000*l.* and pay the same to the plaintiffs therein mentioned: *Held*, that, as between the tenants for life, not impeachable for waste, and the remainder-men, the corpus of the estate must bear the charge; and that the interest of the charge must be paid by the tenant for life in possession, who in the meantime was entitled (as part of the profits of the estate) to the timber, which, as such tenant for life, he had a right to cut.

The trustees of the term in such a case have not an unlimited discretion to raise the charge in such a manner as they may think fit, and it does not follow that, because their discretion in the mode of raising the charge has been honestly exercised, the charge will be left to be finally borne by these parties upon whom their act might chance to throw it.

To a bill by one of the successive tenants for life under the limitation, against the trustees of the term and the tenants for life in possession, to restrain the trustees from raising the 30,000*l.* by sale or mortgage of the estate, until the timber of full growth (of which it was alleged that a large quantity was standing on the estate), had been cut and applied towards that purpose, demurrers were allowed. *Marker v. Kekewich*, 8 Hare, 291.

Case cited in the judgment: *Davies v. Westcomb*, 2 Sim. 438.

12. *Suing as executor*.—*Parties beneficially interested*.—One of two executors may sue the other executor for an account and payment of moneys owing by each other executor to the testator at the time of his death, and to such a suit the persons beneficially interested in the estate are not necessary parties. *Peake v. Ledger*, 8 Hare, 813.

Case cited in the judgment: *Franco v. Franco*, 3 Ves. 75.

13. *Application of money to purposes of taste or ornament*.—There are cases in which the Court may execute a trust for the application of money to purposes of taste or ornament, and, in doing so, may, in the absence of any prescribed standard, or if the standard be more or less indefinite, act upon the opinions of persons who are consulted by others in such matters, as it acts in other cases upon the opinions of persons of science.—*Semble*. *Marker v. Marker*, 9 Hare, 1.

14. *Preservation of ornamental timber*.—*Enforcing*.—The case of a trust or restriction created for the preservation of ornamental timber, is not like a trust for purposes of benevolence (as to which the objects are unlimited, and no standard can be found), but *semble*, is a trust or restriction which the Court will endeavour to execute or enforce. *Marker v. Marker*, 9 Hare, 1.

Cases cited in the judgment: *Mann v. Stephens*, 15 Sim. 579; *Tulk v. Moxhay*, 11 Beav. 571.

15. *Restriction on exercise of power in matter of taste or ornament*.—*Equitable waste*.—The Court may more readily act in enforcing a restriction on the exercise of the legal power in a matter of taste or ornament, where the restriction is connected with a trust, than in the common law case of equitable waste in the absence of any such trust.—*Semble*. *Marker v. Marker*, 9 Hare, 18.

Case cited in the judgment: *Marquis of Downshire v. Sandys*, 6 Ves. 110 c.

16. *Cestui que trust*.—*Matters of personal or private feeling*.—*Costs*.—*Refusal to act*.—Matters of personal or private feeling cannot be considered in a question either of merits or of costs, as between trustee and *cestui que trust*; and therefore a trustee who deems himself to be, or is, assailed by imputations cast upon him by his *cestui que trust*, is not justified in refusing to do an act which his trust requires, until he receive an apology from the *cestui que trust*; and if he refuses, from want of such apology alone, to do an act which his duty as trustee requires, he will be liable to the costs of a suit brought to enforce the performance of such duty. *Moore v. Frazer*, 9 Hare, 299.

17. *Retiring after suit bringing appointment under power before the Court*.—*Where material facts afterwards disclosed*.—The existence of a suit in which an appointment of trust funds made in execution of a power is brought before the Court, and directions consequential thereto are obtained, and the trustees retire, and are succeeded by others, but in which material facts connected with such appointment of the trust fund are not brought to the knowledge of

the Court, does not protect the retiring trustees from the liability which result from such facts, if they involve a breach of trust; but, on the contrary, renders such breach of trust less excusable. *Harrison v. Randall*, 9 Hare, 397.

18. *Deviation from strict letter of his trust*.—*Obligation of satisfying Court of necessity or advantage*.—A trustee is not, in all cases, to be made liable upon the mere ground of having deviated from the strict letter of his trust; for such deviation may be necessary or beneficial to the interests of the *cestui que trusts*; but when a trustee ventures to deviate from the letter of his trust, he does so under the obligation and at the peril of afterwards satisfying the Court that the deviation was necessary or beneficial. *Harrison v. Randall*, 9 Hare, 397.

19. *Acting on invalid appointment*.—A trustee who, having good reason to doubt the validity of an appointment, thinks proper to act upon it, must be affected by the consequences which follow upon the act. *Harrison v. Randall*, 9 Hare, 407.

20. *Administrator*.—*Funds in Court*.—*Prerogative or local grant*.—A trust fund paid into the Court of Chancery, under the Trustee Relief Act, after the death of the *cestui que trust*, ordered to be paid to the administrator of the *cestui que trust* under a grant of letters of administration by the Archdeaconry Court, obtained after the fund was in the Court of Chancery. *In re Spencer's Trust*, 9 Hare, 410.

See *Administration of Assets*, 13, 17; *Deeds, Construction of*, 1; *Partnership*, 12.

#### V. PARTNERSHIP.

1. *Suit to enforce articles*.—*Receiver and manager*.—Where it is not the object of a suit to obtain the dissolution of a partnership, but on the contrary to continue the partnership, it is not according to the practice of the Court, in the course of that suit, to grant a receiver and manager.

Cases, however, may arise in which the conduct of the defendant being such as to endanger the existence of the partnership concern, the Court will appoint an interim receiver and manager. *Hall v. Hall*, 3 M. & G. 79.

Cases cited in the judgment: *Smith v. Jeyes*, 4 Beav. 503; *Oliver v. Hamilton*, 2 Anst. 453; *Wallworth v. Holt*, 4 Myl. & Cr. 619.

2. *Sharing in profits*.—*Specific performance*.—By indenture between the plaintiff of the one part, and the defendants, who were partners in a certain manufacture of which the plaintiff had been the patentee, of the other part, it was stipulated that the plaintiff should have the conduct and management of the business, and that the remuneration which he should receive in respect of his services should be such a sum of money as would be equal to 40*l.* per cent. upon the net profits, that a reduced amount should be paid to his executors in the event of his death until the expiration of the licence, that the plaintiff might purchase the business on certain terms, that the defendants might determine the plaintiff's engagement as manager if he should not in every respect perform the covenants contained in the indenture, but that so long as he continued to observe them, his appointment as manager should be irrevocable during the continuance of the licence, and that nothing therein contained should extend to constitute a partnership: *Held*, there being an absence of every incident of partnership except that of sharing in the profits, that that circumstance alone did not constitute the indenture a contract of partnership, but that it amounted only to a contract of hiring and service.

The plaintiff being dismissed by the defendants from their service, filed his bill for an injunction to restrain the defendants from excluding him from the management : *Held*, discharging the injunction which had been granted by the Vice-Chancellor, that the contract being of hiring and service was one of which specific performance could not be enforced. *Stocker v. Brocklebank*, 3 M. & N. & G. 250.

Cases cited in the judgment : *Mair v. Glennie*, 4 M. & S. 240; *Hesketh v. Blanchard*, 4 East. 144; *Ex parte Hamper*, 17 Ves. 403; *Smith v. Watson*, 2 B. & C. 401; *Wilkinson v. Frasier*, 4 Esp. 182.

3. The administratrix of a deceased partner in a colliery, executed an assignment of all his shares in collieries and other personal estate, which were divided among and accepted by his daughters in equal shares, as their portions of his estate under the Statute of Distributions. The partnership affairs had not been wound up : *Held*, that as the administratrix was still subject to the partnership liabilities, she was entitled to institute a suit against the surviving partners for the purpose of taking the partnership accounts; and that, notwithstanding her children were not parties to the suit. *Clegg v. Fishwick*, 1 H. & T. 390; 1 M. & N. & G. 294.

4. Appointment of receiver. — *Renewed lease*. — Where two members of a partnership obtained a renewed lease of the partnership premises, and the administratrix of a deceased partner showed a *prima facie* title to participate in the benefit of it, the Court protected the property until the rights of the parties could be decided, by appointing a receiver. *Clegg v. Fishwick*, 1 H. & T. 390; 1 M. & N. & G. 294.

5. In the absence of any contract between partners, or any dealing from which a contract may be inferred, it will be assumed that the partners have carried on business on terms of equal partnership; which implies not only an equal partnership *de facto* in profit and loss, but a right in each partner to claim and insist on such participation. Notwithstanding, however, partners have shared equally in profits and losses, the presumption of an equal partnership will be rebutted, if the entries in the books and accounts of the partnership, instead of absolute silence as to the shares of the partners, have described the shares in which the partners were entitled in the business, as materially differing in amount and value. *Stuart v. Forbes*, 1 H. & T. 461.

6. *Lund*. — *Waiver*. — *Acquiescence*. — In the month of May, 1843, a parol agreement was entered into between A. and B. for a partnership between them, as to certain land intended to be used for building purposes, and a lease of it was afterwards executed by the lessor to B. only, the lessor declining to grant a lease to two persons. Certain acts of ownership were exercised by A. shortly after the agreement was entered into; but, afterwards, A. permitted B. to lay out his money in the erection of buildings on the land, without interfering therewith. After a lapse of 18 months, A.'s solicitor applied to B. to perform the agreement, which B. repudiated; six months afterwards, A. filed his bill against B., seeking specific performance of the agreement : *Held*, that the circumstances were such as to exclude A. from insisting on the specific performance of the agreement by B.; but, in the order dismissing the bill with costs, directions were given to the Master to disallow the defendant the costs occasioned by his setting up the Statute of Frauds, and disputing the parol agreement and part performance thereof. *Cowell v. Watts*, 2 H. & T. 224.

Case cited in the judgment : *Norway v. Rowe*, 19 Ves. 144.

7. *Dissolution*. — *Agreement*. — Upon a disagreement, one partner, by letter, proposed to the other, either to retire or to refer to arbitration. The other partner in answer said, he concurred in the retirement, but subject to a condition as to the taking the accounts : *Held*, that the partnership was not dissolved. *Hall v. Hall*, 12 Beav. 414.

8. *Exclusion*. — A partner having excluded his co-partner, an injunction was granted to restrain him from obstructing or interfering with his co-partner in the exercise and enjoyment of his rights under the partnership articles. *Hall v. Hall*, 12 Beav. 414.

9. *Custody of books*. — An injunction granted to restrain the defendant, who had removed the partnership books from the place of business, from keeping them at any other place. *Greatrex v. Grantz*, 1 De G. & S. 692.

10. *Covenant, whether joint or several*. — A firm of three dissolved partnership, one of them retiring; and, by the deed of dissolution, the two continuing partners covenanted for themselves, their heirs, executors, and administrators, that they, or one of them, would pay to the outgoing partner certain specified sums : *Held*, that this only constituted a joint liability at law, and could not be otherwise construed in equity; and a demurrer to a creditor's bill filed by the outgoing partner against the executrix of one of the covenantors, who died before the other, was allowed. *Wilmer v. Curry* 2 De G. & S. 347.

11. *Accounts*. — *Evidence*. — *Statements of accounts by surviving partner*. — Where the accounts of a partnership between two had been carelessly kept, and, after the death of one, the other furnished to the executors of the deceased partner an account current of the partnership dealings, which afforded them the only evidence to charge the surviving partner : *Held*, that they were entitled to use it for that purpose in a suit instituted by the surviving partner to have the accounts taken, without being bound by the entries on the credit side of the account current. *Morehouse v. Newton*, 3 De G. & S. 307.

12. *Suit on behalf of estate of deceased against executors and surviving partners*. — *Collusion*. — A suit by parties beneficially interested in the estate of a deceased partner, cannot be maintained against both his executors and surviving partner, in the absence of special circumstances; but collusion is not the only ground for such a suit; and it may be maintained where the relation between the executors and surviving partners is such as to present a substantial impediment to the prosecution by the executors of the rights of the parties interested in the estate as against such partners. *Travis v. Milne*, 9 Hare, 141; *Milne v. Same*, ib.

13. *Dealing with property of deceased partner*. — *Trusts*. — The surviving partners of a testator dealing with the property of the testator, with the knowledge that it belongs to his estate, are bound to inquire into the trust on which it is held, and are liable as if they had actual notice of those trusts. *Travis v. Milne*, 9 Hare, 141; *Milne v. Same*, ib.

14. *Effect of annual stock-taking as evidence of interests of respective partners*. — It is not to be assumed that the annual stock-taking by a partnership truly represents the interests of the several partners in the firm; but it may, or may not do so, according to the purposes for which, and the mode in which, it is made up. *Travis v. Milne*, 9 Hare, 153; *Milne v. Same*, ib.

15. *Manufacture of secret composition*. — *Waiver of right for separate benefit*. — If a partner in a business, in which a secret process of manufacture and composition of materials is used, who has not, under the

partnership contract, a right to the knowledge of the secret, should openly take part in the manufacture, and should, with the knowledge and concurrence of his partners, be permitted to acquire a knowledge of the process and ingredients, the other partners will be considered to have waived a right to the preservation of the secret for their separate benefit.—*Semble. Morrison v. Moat*, 9 Hare, 241.

16. *Dissolution.—Deed.—Liability of continuing partners for debts due to the old firm.*—Upon the dissolution of a partnership, a deed was executed, whereby the retiring partner assigned the debts to the continuing partners, giving them an irrevocable power of attorney to receive them, and covenanting not to interfere in their collection. The surviving partners continued their dealings with one of the debtors to the old firm, and, without the sanction of the retiring partner, took a security in their own name for the aggregate amount of the old and new debt: *Held*, that they thereupon made themselves personally responsible to the retiring partner for his share of the debt: *Held*, also, that they would have been equally liable as partners, independently of the deed. *Lees v. Laforest*, 14 Beav. 250.

17. *Bond executed at same time as deed.*—Read as part of contract.—Bonds executed by partners to each other, relating to their rights as partners, of the same date as the partnership deed, read with the deed as part of the partnership contract. *Morrison v. Moat*, 9 Hare, 260.

18. *Effect of payment of advertisements out of partnership funds.—Expiration of.*—The payment of the expenses of advertisements out of partnership funds, is not necessarily a ground for giving to each partner, at the expiration of the partnership, a continuing share in the advantages of publicity produced by the advertisement; the partnership having had, during its continuance, the benefit of the expenditure. *Morrison v. Moat*, 9 Hare, 266.

19. *Absence of some partners.—Evidence as to the identity of interests.*—Where the absent partners in a numerous partnership are to be bound by proceedings taken in a suit in their absence, it is necessary that the parties who represent them on the record should have interests identical with those of the absent parties; and the Court in such case, in making a decree which is to bind absent parties, must ascertain by strict proof that the parties by whom the cause is conducted, have the interests which they allege that they have, and upon which their title to sustain the suit is founded. *Clay v. Rufford*, 8 Hare, 281.

#### VI. PATENTS.

1. *Licence to use.—Waiver of clause of forfeiture.*—The plaintiffs, the assignees of a patent, granted a licence to the defendant to use the patent upon the terms of his paying an annual rent of 2,000*l.* to be made up at the end of each year, and reserved to themselves the power of determining the licence in the event of default being made in payment of this rent. The defendant failed in paying the rent; but the plaintiffs, notwithstanding, for several years, allowed the defendant to use the patent, and received from him a less annual sum than that stipulated. At length, however, they determined the licence, having, subsequently to the expiration of the previous year, received from the defendant payment, on the footing of the reduced rent. *Held*, that, by so doing, the plaintiffs had elected not to treat the previous breach as a forfeiture of the licence, and that, consequently, they were not entitled to an injunction restraining the defendant from using the patent. *Warwick v. Hooper*, 3 M.N. & G. 60.

2. *Construction of prohibitory words.*—The pro-

hibitory words of the patent, which are addressed only to the subjects of this country, are in aid of the grant, and not in derogation of it. *Caldwell v. Vanolissengen*, 9 Hare, 415; *Same v. Verbeck*, *ib.*; *Same v. Rolfe*, *ib.*

8. *Against foreigners to restrain infringement on board ships within jurisdiction.*—Injunction granted against subjects of the kingdom of Holland to restrain them from using on board their ships within the dominions of England, without the licence of the plaintiffs, an invention, to the benefit of which the plaintiffs were exclusively entitled under the Queen's patent. *Caldwell v. Vanolissengen*, 9 Hare, 415; *Same v. Verbeck*, *ib.*; *Same v. Rolfe*, *ib.*

4. *Interference of Court of Equity before right established at law.*—Principles upon which the Court will interfere to protect a patentee before he has established his right at law in the case of patents which have been long used or enjoyed, or will, in the case of new patents, suspend its interference, until the right at law has been established. *Caldwell v. Vanolissengen*, 9 Hare, 424. *Same v. Verbeck*, *ib.*; *Same v. Rolfe*, *ib.*

5. *Effect of previous user.*—What previous user will invalidate, and what user, if any, can be admitted in contravention of the patent right, are difficult questions, depending, one upon the extent of previous knowledge, the other upon the effect of the grant. *Caldwell v. Vanolissengen*, 9 Hare, 428; *Same v. Verbeck*, *ib.*; *Same v. Rolfe*, *ib.*

6. *Necessary user.—Infringement.*—Whether there might not be a case of necessary user of an invention which the Court would not regard as the infringement of a patent—*Quere.* *Caldwell v. Vanolissengen*, 9 Hare, 429; *Same v. Verbeck*, *ib.*; *Same v. Rolfe*, *ib.*

#### VII. SPECIFIC PERFORMANCE.—VENDOR AND PURCHASER.

1. *Liability to show boundary line between freehold and leasehold.*—*Held*, under the circumstances of the case, that a party having agreed to purchase premises stated to be partly freehold and partly leasehold could not, in the absence of fraud, concealment, or misrepresentation on the part of the vendor, resist a specific performance of his contract merely on the ground that the exact position of the boundary line between the freehold and leasehold portions could not be ascertained, and that this would be so, even assuming for the purposes of argument that a vendor who contracts to sell property partly freehold and partly leasehold, is, in the absence of specific stipulations, to be considered as bound to show what part is freehold and what leasehold. *Monro v. Taylor*, 3 M.N. & G. 713.

2. *Interest on purchase money.—Costs.*—Where on a reference as to title in a suit for specific performance the plaintiff, the vendor, showed a good title in the opinion of the Master from the time of producing before him certain evidence, the existence of which was well known to the defendant, but it had formed no subject of dispute between him and the vendor: *Held*, that interest on the purchase money ought to be allowed from the time fixed by the contract for completion, and not merely from the time of the good title actually shown: *Held*, also, that the plaintiff was under the circumstances entitled to the costs of the suit. *Monro v. Taylor*, 3 M.N. & G. 713.

3. *Boundary between freehold and leasehold.—Property not distinctly defined.—Specific performance.*—Specific performance of a contract for the sale of property partly freehold and partly leasehold will not be refused on the ground that the boundaries of the two portions are not distinctly defined.—*Semble.* *Monro v. Taylor*, M.N. & G. 713.

4. *Contract relating to sale and purchase of chattels*.—Courts of Equity will not lend their assistance to enforce the specific performance of ordinary contracts for the sale and purchase of chattels, unless there be something very special in the nature of the contract. On the other hand, if a trust be created, the circumstance that the subject matter is a personal chattel, will not prevent this Court from enforcing the due execution of that trust. *Pooley v. Budd*, 14 Beav. 34.

5. *Purchase for valuable consideration without notice where legal estate outstanding*.—Purchase for valuable consideration without notice may be a good defence, although the legal estate is outstanding in a mortgagee. *Penny v. Watts* 2 De G. & S. 501.

Cases cited in the judgment: *Daniels v. Davison*, 16 Ves. 249; *Allen v. Anthony*, 1 Mer. 282.

6. *Landlord and Tenant*.—The landlord of a workshop, which he held under a lease, agreed in writing to underlet it at a yearly rent, with an option to the tenant to take an underlease upon the same terms for 21 years from the previous Lady-day. The tenant continued in possession under this agreement for four years, when he received notice to quit. He then applied to his landlord for a lease of 21 years, according to the agreement. Some months afterwards, the landlord obtained possession of the premises under a warrant of possession from a District Court. The tenant filed a bill against the landlord for a specific performance and an injunction. It appeared, at the hearing, that the tenant had not kept the premises in repair. The Court dismissed the bill with costs, and expressed a doubt whether the plaintiff had not, by his delay alone, lost his option to renew. *Nunn v. Truscott*, 3 De G. & S. 304.

7. *Suspension of right of action*.—*Circuity*.—*Jurisdiction*.—The payee of two promissory notes brought to sue the maker, the brother of the maker agreed to pay 200*l.* to the payee, in trust for *E.*, or 6*l.* 10*s.* per quarter, so long as the 200*l.* should be unpaid, so that the notes should be suspended and rendered inoperative so long as the brother continued to pay the 6*l.* 10*s.* a quarter to the payee; and on payment of the 200*l.* all claim on the notes to cease, and the same to be given up. The brother not having paid the 6*l.* 10*s.* to the payee, for two quarters, but having paid those sums to *E.*, the *cestui que trust* (as the latter admitted), the payee brought his action upon the note against the maker.

*Held*, in error, reversing the judgment of the Queen's Bench, that the agreement could not be pleaded in bar to the action upon the notes, but might be the subject of a cross action.

*Held*, in equity that the agreement must be construed as a contract by the brother to provide for *E.* the annuity of 25*l.*, or the gross sum of 200*l.*, as a substitute for the two notes, and by the payee that the two notes should thenceforth be only a security for the performance of such contract; and not as an agreement, under which the original right of the payee against the maker would revive on any failure of the quarterly payments by the brother.

That the brother was entitled to the specific performance of the agreement in equity, not on the ground of the circuity of cross actions which the rule of law occasioned, but on the ground that this Court, by modifying its decree, could give to all parties the benefit of the agreement, whilst a Court of law, being unable so to modify its judgment, could not give to one party the benefit of the agreement without depriving another party altogether of such benefit. *Begg v. Ford*, 7 Harv. 208.

See *Administration of Assets*, 1; *Executors and Trustees*, 2; *Partnership*, 2.

#### VIII. RAILWAY CASES.

1. *Calls*.—*Forfeiture of shares for non-payment*.—Motion to restrain a company from declaring a forfeiture of shares, by reason of the non-payment of calls alleged to be made for illegal purposes, refused, although it appeared that the directors had conducted the proceedings, in many particulars, in a very improper manner, it being sworn that money was wanted to satisfy existing legal obligations of the company, and it being denied that the company sought to enforce the calls for illegal purposes. *Logan v. Earl of Courtown*, 13 Beav. 22.

2. *Calls*.—*Mortgagee of shares*.—*Compelling payment by*.—A bill by a railway company to compel a mortgagee of shares not standing in his name to pay the calls, cannot be sustained. *Newry, &c., Railway Company v. Moss*, 14 Beav. 64.

*A.* advanced money to *B.* on the security of railway shares. They were transferred into the name of *A.* to secure *C.* and subject thereto for *B.* *C.* died insolvent: *Held*, that *A.* was not liable at the suit of the company for the arrears of calls on the shares. *Newry, &c., Railway Company v. Moss*, 14 Beav. 64.

3. *Contractor*.—*Want of equity*.—Contractors agreed to perform certain works for a railway company within a certain time, and were to be paid from time to time for the work certified by the company's engineer to have been duly performed. In default, the company were to be at liberty to take possession of the works, and of all the contractors' plant and materials. Some delay in performing the works was occasioned by the acts of the engineer, not repudiated by the company, and the rate of proceeding with them was distinctly varied by him. The company afterwards gave notice to the contractors that they were not proceeding to the satisfaction of the company, and they soon afterwards took possession of the plant and materials. The contractors filed a bill, alleging that certificates had been unjustly withheld, and the payments had improperly fallen into arrear; and it prayed that accounts might be taken of what was due to them, and for an injunction to restrain the company from taking the works and plant. A demurrer, for want of equity, was overruled. *Waring v. The Manchester, Sheffield, and Lincolnshire Railway Company*, 2 H. & T. 239.

4. *Contractor*.—*Discovery*.—*Account and payment of what found due*.—A contractor filed a bill against a railway company, and their secretary and engineer, stating that he had entered into a contract with the railway company to make certain parts of a railway at a fixed price, portions of which were to be advanced from time to time, on account for works done and executed, upon the certificate of the engineer for the time being of the company, and the balance being payable on the completion of the works, upon the like certificate. The bill alleged that the engineer refused his certificate at the instance of and in collusion with the company. It sought discovery from the company, and their secretary and engineer, and prayed for a declaration, that the withholding of the certificate was a fraud on the plaintiff. It also prayed for an account against the company, and a decree for payment of what should be found due to the plaintiff. The company, the secretary, and the engineer separately demurred generally to the bill, but the Court overruled each demurrer. *Midland v. Great Western Railway Company*, 2 De G. & S. 758.

Cases cited in the judgment: *Steward v. East India Company*, 3 Ves. 889.

5. *Contractor.—Account.—Injunction.—Want of equity.*—The plaintiffs contracted to execute works on a railway, to the satisfaction of the engineer of the company, by the first of October, 1848, making such alterations in, and hastening the works, as the engineer should direct; and the company agreed to pay for such works a stipulated sum, and thereof to pay a proportionate part monthly, according to the value of the works which the engineer should certify to have been done, retaining 51. per cent. of the certified amount; and the contract provided that all disputes as to fact, discretion, or opinion, were to be referred to the absolute determination and award of the engineer, whose decision was to be final, and without appeal; and if the engineer should be dissatisfied with the works, the company might take possession of, and complete the same, at the expense of the plaintiffs, after giving them 14 days' notice. The works were delayed with the assent of the company, but in January, 1849, the engineer required the works to be prosecuted with increased speed, and insisted that the line should be opened on the 1st of June. On the 21st of May, the company gave notice to the plaintiffs, in the terms of the contract, that they would, at the expiration of 14 days, take possession of, and proceed with the works. The plaintiffs thereupon filed their bill to restrain the company from taking such possession, alleging, that when the plaintiffs were proceeding with due speed, the engineer had, by the authority of the directors, ordered that the work should be delayed for a considerable time; that the company had waived the completion of the works by October, 1848, and that the plaintiffs were only bound to carry on and complete the same at a rate computed on the footing of the original contracts and modified by the delay which the company had required; that the engineer had, by the order of the directors, given monthly certificates for less than a fair proportion of the contract sum, according to the work actually done at such times; that a large sum was due to the plaintiffs which had not been paid; and that the company had not, in fact, paid all the sums which had been certified. The bill denied any default on the part of the plaintiffs, and charged that the notice was given for the fraudulent purpose of avoiding the payment of sums due to the plaintiffs, and of ejecting them from the works, and procuring other persons to finish the works at an earlier period than the plaintiffs were bound to do. The bill also prayed an account of what was due to the plaintiffs from the company in respect of the works, and an injunction to restrain the company from proceeding against the plaintiffs for penalties under the contract, on the ground of their non-completion.

Upon demurrer by the company, it was objected first, that the contract had not been completed on the part of the plaintiffs, and that it was not a contract of which, as against the plaintiffs, if they had been defendants, the Court could have decreed a specific performance; and, secondly, that the entire control of the works was by the contract given to the engineer, whose decision was to be without appeal; but—

*Held*, that the plaintiffs were entitled to the protection of a Court of Equity, and that the demurrer must be overruled.

It is no objection to relief in such a case, that it depends on a variation of, or departure from the contract made by the directors and officers of an incorporated company, such variation or departure not being under the authority of their common seal. *Waring v. Manchester, Sheffield, and Lincolnshire Railway Company*, 7 Harv. 482.

Cases cited in the judgment: *Dittrichsen v. Cabburn*, 2 Phill. 52; *Ranger v. Great Western Railway Company*, 1 Rail Ca. 50; *M'Intosh v. Great Western Railway Company*, 4 Law Jour. N. S. Chanc. 18.

6. *Contractor.—Account.—Issue at law*—Dispute having arisen between a railway company and a contractor employed in making a railway, the company insisting upon a right under the contract, owing to the alleged default of the contractor to discharge him, take possession of the line and materials, and complete the works themselves, and the contractor resisting such claim, imputing the backward state of the works to the servants of the company, and holding forcible possession; collisions occurring between the workmen of the two parties, each being charged with impeding the operations of the other; and the completion and opening of the railway for traffic being in the meantime delayed, the Court, on the application of the company, restrained the contractor from continuing on the line or interfering with the operations of the company, directed an account of what was due to the contractor for works and materials done and provided, without regard to the formal certificates of the company's engineer, and an issue to try whether the company, at the time they proceeded to enter upon the works to remove the contractor, were lawfully justified in so doing; reserving as well the question of the right of the contractor to compensation for loss of profit on unexecuted works, as all other directions, until after the trial and the report *East Lancashire Railway Company v. Hattersley*, 8 Harv. 72.

Cases cited in the judgment: *Davenport v. Davenport*, 7 Harv. 217; *Rigby v. Great Western Railway Company*, 2 Phill. 44; *Glamorgan-shire Canal Case*, 1 My. & K. 184; *Dawson v. Power*, 5 Harv. 422.

7. *Dividend.—Rights of shareholders.*—An act of Parliament, which authorised the transfer of a particular portion of a projected railway from one railway company to another, enacted, that if that portion of the railway was not completed within three years from such transfer, it should not be lawful for the railway company to pay any dividend until the whole should be completed. That portion was not completed within the three years: *Held*, that the company were prohibited from paying any dividend on any of their shares, and not merely upon the capital embarked in that particular portion of their undertaking.

*Held*, also, that one shareholder might sue on behalf of himself and other shareholders to restrain the payment of any future dividend; and that notwithstanding he had received interest on his shares since the expiration of the three years, he being then ignorant of the enactment in question.

*Held*, also, that the plaintiff, being the holder of some shares of a particular class which were not entitled at present to participate in any dividend, was not entitled, on a bill so framed, to an injunction to restrain the payment of a dividend already declared, the other shareholders who were interested in those dividends not being parties to the record or represented.

Whether, in such a case any adequate remedy exists, without making all the shareholders parties, *quære*. *Carlisle v. The South Eastern Railway Company*, 2 H. & T. 386; 1 M. N. & G. 689.

Cases cited in the judgment: *Davis v. Bank of England*; 2 Bing. 398; 5 B. & C. 185; *Coles v. Bank of England*, 10 A. & E. 449; *Mozley v. Alston*, 1 Phill. 798; *Taylor v.*



Salmon, 4 My. & C. 134; Wallworth v. Holt, 4 My. & Cr. 619; Richardson v. Larpent, 2 Y. & C., C. C. 507; Evans v. Stokes, 1 Keen, 24.

8. *Dividend.—Receipt of tolls before all works completed.*—It cannot be safely said, that in no case whatever that stock companies ought to be allowed to divide any profit or receive any tolls, until all their works have been completed. *Browne v. Monmouthshire Railway & Canal Company*, 13 Beav. 32.

9. *Dividend.—Works incomplete.—What matter for internal management.*—After the expiration of the time for completing a railway, which by their act the company were "required" to make, a bill was filed by a shareholder seeking to restrain the company from making any dividend until the whole of the works had been completed. A general demurrer was allowed, on the ground that the non-completion being a public wrong, the Court had not jurisdiction to interfere, and that the misapplication of the income was the subject of internal regulation. This Court does not attempt to direct the performance of all the duties which the governing bodies of such companies owe to the shareholders; but, on the contrary, leaves to the companies themselves the enforcement of all the duties arising out of matters which are the subject of internal management. *Browne v. Monmouthshire Railway & Canal Company*, 13 Beav. 32.

10. *Dividends.—Suing on behalf, &c.*—By act of Parliament, railway A. was authorised to transfer a portion of the line to a railway B., with power for railway B. to raise new shares to complete it; and it was provided, that if, after transfer, the transferred line should not be completed within three years, it should not be lawful for railway B. to pay any dividend until the whole railway should be opened. The three years having expired, *held*, that railway B. could pay no further dividends even to its original shareholders, until the branch had been completed, and they were restrained by injunction in a suit by one shareholder, suing on behalf, &c.

The Master of the Rolls restrained the payment of a dividend declared the day on which the bill was filed, but this was reversed by the Lord Chancellor. *Carlisle v. South Eastern Railway Company*, 13 Beav. 295.

11. *Land and Railway Clauses' Consolidation Act.—Postponement of parties' rights.—Completion of line.*—An act of Parliament recited three other acts, one only of which had relation to an agreement entered into between the plaintiffs and defendants. By the first section, on the completion of the works of the three lines of railways, by the recited acts authorised to be made, so as to be opened for public traffic, or such other period as might be agreed upon, the South-Western Railway Company were empowered to grant to the London and North-Western Railway Company a lease in perpetuity of the undertaking. By the 11th section of the same act, it was enacted, that as each of the lines of railway should be completed, the same should be worked and used by the London and North-Western Railway Company, and for the purposes of such working, the London and North-Western Railway Company were to exercise the powers before given by the act to the South-Western Railway Company, in relation to every such completed railway. Other sections of the act spoke of the "lease of the said railways," and the "making of such lease." *Held*, that, according to the true construction of the act, there was no postponement of the rights of the parties to the benefit of the provisions of the lease, until the whole of the three lines had been completed. *Shrewsbury and Bir-*

*mingham Railway Company v. London and North-Western Railway Company*, 2 H. & T. 257; 2 M.N. & G. 324.

12. *Lands' Clauses.—Specific performance.—Notice to take lands.*—Whether the mere fact of a company giving notice of their intention to take lands, such notice not being followed up by any agreement between them and the owner, and no claim being sent in by the owner, gives the Court jurisdiction to compel specific performance of such a contract, although it fixes the lands which the company are to take, *—quære.* *Adams v. London and Blackwall Railway Company*, 2 H. & T. 285; 2 M.N. & G. 118.

13. *Lands' Clauses.—Purchase of land.—Necessary roads, &c.—Surrender of property.—Reference.*—A railway company about to sever the plaintiff's land by their railroad, agreed to purchase the necessary portion of land, "subject to the making of such roads, ways, and allops for cattle as might be necessary." *Held*, that the plaintiff was entitled to a specific performance, and to have such roads, ways, and allops for cattle as might be necessary and proper for convenient communication between the severed portions of the plaintiff's land; and a reference was therefore directed to ascertain what was necessary and proper. *Sanderson v. The Coker-mouth and Workington Railway Company*, 2 H. & T. 327.

14. *Lands' Clauses.—Contract to take lands.—Jurisdiction to secure easements.*—Where land is taken by a railway company not under their compulsory powers, but by private contract, the jurisdiction of the Court of Chancery to secure to the vendor the easements he contracted for, is not ousted by the provisions of the Railway Acts. *Sanderson v. The Coker-mouth and Workington Railway Company*, 2 H. & T. 327.

15. *Lands' Clauses.—Rights and remedies of bond and mortgage creditors in reference to general creditors.*—By the 32nd section of the special act of a railway company, it was provided that the bond creditors and mortgagees of the company should be entitled to be paid out of the tolls and other estate and effects of the company, the sum advanced, &c., and that in all other respects the provisions of the Companies' Clauses Consolidation Act should be applicable: *Held*, that having regard to the 36th and 44th sections of the latter act, a bond creditor had no lien on the estate or effects of the company, and that the goods and chattels of the company were liable to be seized under a writ of *fi. fa.* at the suit of a judgment creditor.

The company having raised large sums of money by bond and on mortgage, and being also considerably indebted on simple contract, agreed with one of their simple contract creditors to suffer judgment to be entered up against the company at a future day. After this agreement, various negotiations took place between the bond and other creditors of the company, and the company with the view of postponing, on certain terms, the enforcement of all claims, as well by specialty as simple contract, against the company for seven years, these terms were accepted by the great majority of the creditors, but rejected by the simple contract creditor. After such rejection, but before the period for issuing execution had arrived, a bill was filed by one of the bond creditors against the company, and its other specialty creditors, for the enforcement of his alleged equitable lien, and for the appointment of a receiver. The receiver was appointed by the consent of all parties to the suit, and entered into the possession of all the chattels of the company. The simple contract creditor then sued out execution against the company: *Held*, on the petition of

the simple contract creditor, that, inasmuch as the order appointing a receiver was obtained by a surprise on the Court, and did not rest on an equity which could be maintained, and would not have been made if all the circumstances of the case had been brought before the Court, the simple contract creditor ought to be allowed to levy upon the goods and chattels of the company notwithstanding the order.

*Held*, also, that, inasmuch as all the facts of the case were admitted, and were before the Court on the petition, the Court would dispense with the usual reference to the Master to examine the petitioners *pro interesse suo*. *Russell v. East Anglian Railway Company*, 5 M.N. & G. 125.

Cases cited in the judgment: *Dixon v. Smith*, 1 Swanst. 457; *Evelyn v. Lewis*, 3 Hare, 472; *Drewry v. Thacker*, 3 Swanst. 529; *Gooch v. Haworth*, 3 Beav. 428; *Attorney-General v. Mayor of Coventry*, 1 P. W. 306.

The 33rd section of the special act empowered bond creditors and mortgagees of the company to enforce the payment of the arrears of principal and interest by the appointment of a receiver: *Held*, that having regard to the 53rd and 54th sections of the Companies' Clauses Consolidation Act, the receiver indicated in the 33rd section of the special act was the receiver to be appointed by two justices under the 53rd and 54th sections of the former act. *Russell v. East Anglian Railway Company*, 3 M.N. & G. 125.

16. *Lands' Clauses.—Owner.—Injunction.*—After a railway company had purchased a piece of land from A., who was mentioned in the book of reference to be the owner of it, B., a neighbouring landowner, part of whose land the company had also taken, claimed to be owner of the piece of land, and filed a bill for an injunction to restrain the company from continuing in possession of it, and from committing waste on it. But the Court refused the injunction. *Webster v. South-Eastern Railway Company*, 1 Sim. N. S. 272.

17. *Lands' Clauses.—Specific performance.—H.* and *Y.* and several other persons calling themselves the Lancashire and North Yorkshire Railway Company, introduced a bill into Parliament for incorporating the company and making their railway, which was intended to pass through the plaintiff's estate and near his residence. The plaintiff prepared to oppose the bill, but afterwards desisted, in consequence of *H.* and *Y.* having agreed with him, on behalf of the company, that, in case the company should, in the then or in any subsequent session, obtain an act of incorporation, they would pay the plaintiff 1,000*l.* for all the lands required by them for making the railway, and 4,000*l.* for residential injury, and 25*l.* for his personal expenses, and also that they would pay the expenses of his solicitor in the business. Afterwards that company joined with a rival company, calling itself the Liverpool, Manchester and Newcastle Company, in applying for an act for making a railway, the line of which so far as the plaintiff's estate was concerned, was the same as the line of the Lancashire and North Yorkshire Company; and the two companies agreed to adopt the agreement with the plaintiff. The act passed, and by it the two companies were incorporated by the name of the Liverpool, Manchester, and Newcastle Railway Company.

*Held*, that the incorporated company must be taken to be the parties on whose behalf *H.* and *Y.* entered into the agreement with the plaintiff.

The Court also was of opinion that, as the plain-

tiff had withdrawn his opposition to the bill in Parliament, the company, according to the true construction of the agreement, were bound to pay the sums agreed to be paid to him, although they had not taken possession of any part of his estate. But the question as to the construction of the agreement being a legal one, a case was directed for the opinion of a Court of Law. *Preston v. Liverpool, Manchester, and Newcastle-upon-Tyne Junction Railway Company*, 1 Sim. N. S. 586.

18. *Lands' Clauses.—Specific performance.—Sale of Railway Shares.*—A shareholder in an incorporated railway company instructed a stock-broker to sell his shares. The broker agreed with a jobber for the sale of them; but the name of the purchaser was not mentioned. The jobber had been instructed to purchase by *B.* (another broker), who, as the jobber knew, was not purchasing on his own behalf. *B.* afterwards requested time for completion, his principal not being ready; and the jobber granted the time on *B.* giving his own name as that of the principal. A deed of assignment was prepared from the vendor to *B.*, who paid the price to the vendor, and took the deed of assignment executed by the vendor: *Held*, upon a bill filed by the vendor, that *B.* was bound to execute the assignment, to procure himself to be registered, and to pay the calls made since the execution of the assignment by the vendor, and to indemnify the vendor against future calls, and a decree was made to that effect. *Wynne v. Price*, 3 De G. & S. 310.

*Lands' Clauses.—Specific performance.—Consequential damage.*—Specific performance decreed of an agreement to pay for the lands to be taken for a railway, a certain sum, which included not only the purchase-money of the lands, but compensation for the consequential damage to the property of the landowner; the case not being one in which compensation was under the act a distinct subject of contract, but being merely an agreement by the landowner to accept a sum in full for the purchase and damage; the purchase being the substance of the agreement, and the damage an incident. *Webb v. Direct London and Portsmouth Railway Company*, 9 Hare, 129.

20. *Lands' Clauses.—Specific performance.—Hardship or oppressiveness in terms.*—The fact that the performance of an agreement has, owing to circumstance which have subsequently occurred, become hard in its consequences to one of the parties, or that is called upon to perform it under circumstances which he had not contemplated, is no objection to the specific performance of the contract in equity, there being nothing doubtful in the meaning of the agreement, and nothing hard or oppressive in its terms at the time it was made. *Semble. Webb v. Direct London and Portsmouth Railway Company*, 9 Hare, 129.

21. *Lands' Clauses.—Public highway.—Passing over another company's lines.*—Whether the 92nd section of the Railway Clauses Consolidation Act does or does not convert railways into public highways, and whether that section be or be not controlled by the 87th section of the same act, giving powers to companies to enter into agreements as to passing over or along each other's lines; yet when an agreement as to the terms of passing over or along each other's lines has been entered into between railway companies, their rights in respect of such passing depend upon the terms of the agreement, and are no longer governed by the provisions of the Railway Clauses Consolidation Act. *Great Northern Railway Company v. Eastern Counties Railway Company*, 9 Hare, 306.

22. *Lands' Clauses.—Notice to take.—Compulsory*

**powers.**—A railway company having given notice of their intention to purchase lands for the undertaking, deposited the purchase-money and delivered the bond (according to the provisions of the 85th section of the Lands Clauses' Consolidation Act), before the expiration of the period prescribed for the exercise of their compulsory powers; neither their power to purchase the land, nor their power to enter, is gone by the subsequent expiration of that period. *Sparrow v. Oxford, Worcester, and Wolverhampton Railway Company*, 9 Hare, 436.

**23. Lands' Clauses.**—**Power to take lands and complete the title.**—The powers for the compulsory purchase and taking of lands referred to in the 123rd section of the Lands Clauses' Consolidation Act, are powers given to the several promoters of the several special acts in which that act might be incorporated, and not several powers given to the promoters of each special Act.

The 123rd section of the Lands Clauses' Consolidation Act, refers to the powers given by the Act for the purchase and taking of land; but not to the powers thereby given for carrying into effect a purchase already made. *Sparrow v. Oxford, Worcester, and Wolverhampton Railway Company*, 9 Hare, 436.

**24. Lands' Clauses.**—**Powers of purchase and taking lands.**—Powers under the head of the purchase and taking of lands distinguished into those strictly for that purpose, and those which are powers for carrying into effect a purchase already made. *Sparrow v. Oxford, Worcester and Wolverhampton Railway Company*, 9 Hare, 445.

**25. Lands' Clauses.**—**Lands taken.**—The clauses 58 to 67 of the Lands Clauses' Consolidation Act refer to lands which may more properly be said to be taken than purchased. *Sparrow v. Oxford, Worcester, and Wolverhampton Railway Company*, 9 Hare, 445.

**26. Lands' Clauses.**—**Right to perfect title to lands taken.**—Where a railway company are entitled under their compulsory powers to perfect their title. *Sparrow v. Oxford, Worcester, and Wolverhampton Railway Company*, 9 Hare, 446.

**27. Misapplication of funds.**—Whether a company, having powers to construct several branch and extension railways, and to raise certain distinct sums of money for such respective works, such moneys being declared part of the general capital of the company, may or may not lawfully apply moneys in the execution of one undertaking, which they were empowered to raise for another,—*quære*. *Bagshaw v. The Eastern Union Railway Company*, 2 H. & T. 201; 2 M'N & G. 389.

**28. Misapplication of funds contrary to act of Parliament.**—Where a company is authorised by act of Parliament to raise moneys for a specific purpose only, it is not competent to any majority of the shareholders of the company to divert such moneys to another purpose against the will of a single shareholder, nor could unanimity amongst the shareholders make such a diversion lawful. *Bagshaw v. The Eastern Union Railway Company*, 2 H. & T. 201; 2 M'N & G. 389.

**29. Misapplication of funds.**—A railway company became lawfully possessed of shares in another independent railway company: *Held*, that having no authority to do so by their act of Parliament, they could not legally, as against one dissentient shareholder, increase their number of such shares, or apply their funds for the support of the second company. *Salomons v. Laing*, 12 Beav. 339.

**30. Misapplication of funds.**—A railway company is bound to apply all its moneys and property for the purposes directed and provided for by the

act of Parliament, and not for any other purpose whatever. Any application of or dealing with the capital, funds, or money in any manner not distinctly authorised by the Act is illegal; and where directors, for purposes not authorised by the Act, are proceeding to involve the company or shareholders in liabilities to which they never consented, relief may and ought to be given in the Court. In such a case, one shareholder may sue on behalf, &c. *Salomons v. Laing*, 12 Beav. 339.

**31. Misapplication of funds to purposes advantageous or profitable to company, not defined by act of Parliament.**—Companies having funds for objects which are distinctly defined by act of Parliament, cannot be allowed to apply them to any other purpose whatever, however advantageous or profitable that purpose may appear to be to the company, or to the individual members of the company. *Munt v. Shrewsbury and Chester Railway Company*, 13 Beav. 1.

**32. Misapplication of funds.**—**Bill in Parliament.**—A railway communicated with a river, upon the banks of which the company were empowered to erect wharfs, &c., and take tolls. The navigation of the river having become deteriorated, the company were about to support a bill for improving it. An injunction was granted to restrain the application of the funds of the company towards that object. *Munt v. Shrewsbury and Chester Railway Company*, 13 Beav. 1.

**33. Misapplication of funds.**—It is improper and wrong for railway companies to embark their funds in other railway undertakings; and they have no right to engage or pledge their funds, or entangle their affairs in unauthorised transactions, upon the speculation that they may obtain parliamentary authority for doing acts which are beyond their powers at the time when they are done. *Logan v. Earl of Courtown*, 13 Beav. 22.

**34. Misapplication of funds.**—**Costs of application to Parliament to alter rights of shareholders.**—In a railway company there were two classes of shareholders. A general meeting authorised the directors to apply to Parliament for an act which would very materially alter the existing rights and interests of the two classes *inter se*: *Held*, that such an application was not a breach of trust or duty, and that to hold otherwise would be to apply too strictly to a railway company the principles admitted to be applicable to private partnerships, resting on private contracts unconnected with public duties and interests, and capable of dissolution.

Upon the application of a shareholder of one of such two classes, for an injunction to restrain the application to Parliament, and the use of the corporate seal, and the application of the corporate fund for that purpose, the Court refused to restrain the application to Parliament, or the use of the corporate seal for that purpose, but restrained the application of the funds and moneys of the company towards the payment of the costs. *Sterns v. South Devon Railway Company*, 13 Beav. 48.

Case cited in the judgment: *Parker v. River Dunn Navigation Company*, 1 De G. & S. 192.

**35. Partial execution of line.**—When an Act of Parliament has been obtained by a company for constructing a line of railway, and funds have been subscribed for that purpose, this Court will, on the application of a single shareholder, restrain the company from applying those funds, or any part thereof, in the construction of a railway on a portion only of the line, or otherwise than for the purpose and with the view of making and completing

the entire line. *Cohen v. Wilkinson*, 1 H and T. 554; 1 M'N. & G. 481.

36. *Partial Execution of line—Laches.*—The Directors of a railway company, with the concurrence of a majority of the shareholders, on finding the original undertaking impracticable proceeded to construct a small portion only of the works. On an application by an individual shareholder on behalf of himself and the other shareholders for an injunction to restrain this proceeding, the Court refused to interfere, on the ground of the acquiescence of the plaintiff, and also that the other shareholders had for eighteen months previously to filing the bill known, or had had the means of knowing, the act complained of. *Graham v. Birkenhead, Lancashire, & Cheshire Junction Railway Company*, 2 M'N. & G. 146; 2 H. & T. 450.

37. *Partial extension of line.*—The Eastern Union Railway Company was authorised by several acts of Parliament to make railways from Colchester to Ipswich, Ipswich to Bury St. Edmunds and Norwich, and from Ipswich to Harwich, and for those purposes to raise moneys by shares and loans, not exceeding certain sums in the whole. The same company was also, by a distinct act, authorised to purchase and complete the Hadleigh junction railway, and, for that purpose, by shares or loan to raise a sum not exceeding 100,000*l*. In a suit brought by the proprietor of a scrip certificate for stock, forming part of the capital raised in pursuance of the acts authorising the company to purchase the Hadleigh junction railway, and make the Harwich line:—charging that the company was about to misapply such money in the construction of the Norwich line, and seeking to restrain such misapplication,—the demurrers of the company and the directors, for want of equity, were overruled.

The company, in its corporate character, was properly made a defendant to such a suit by some of the members. *Bagshaw v. The Eastern Union Railway Company*, 2 H. & T. 201; 2 M'N. & G. 389.

38. *Partial execution of line—Information.*—A railway company was constituted in 1846, for the purpose of making a railway from A. to B., with a diverging line to C. In June 1851, the line of railway from A. to B. was nearly completed, but no steps had been taken to construct the diverging line. An information was then filed by the Attorney-General at the relation of certain parties claiming to be interested in the diverging line, to restrain the company from opening the line from A. to B., except with the intention of completing also the diverging line: *Held*, upon demurrer, that the neglect by the company to complete the whole line could not be regarded in the light of a public injury so as to warrant the interference of the Attorney-General. *Attorney-General v. Birmingham & Oxford Junction Railway Company*, 3 M'N. & G. 453.

39. *Partial execution of line.*—By three acts of Parliament of the same Session, a railway company was empowered to make three distinct lines, forming a cluster and not a continuous line. In the next Session an act was passed, declaring the company to have been and to be only one company, and authorising and requiring them to grant a lease of the lines to another company. They completed only one of the lines, which was worked by the other company under the provisions of the last act. Some months after it was obvious that the other two lines could not be completed within the time prescribed by the acts, a shareholder in the first company filed a bill seeking to restrain it from applying its funds otherwise than for the purpose of

constructing all three of the lines; but he did not make the company, who were lessees, parties to the suit: *Held*, that more inconvenience would arise from the Court interfering than from its abstaining to do so, and on this account, as well as on the grounds of acquiescence and want of parties, an injunction granted by the Court below was dissolved. *Hodgson v. Earl of Powis*, 1 De G., M'N. & G. 6.

40. *Partial execution of line.—Construction of part only.*—*Quare* whether railways forming a cluster, differ from a continuous line with respect to the propriety of granting an injunction against the construction of part only of an undertaking authorised by the Legislature. *Hodgson v. Earl of Powis*, 1 De G., M'N. & G. 6.

41. *Partial execution of line.*—A railway company authorised to make a line of 56 miles, resolved on making only four miles of it, and to abandon the rest. *Held*, that such a resolution was illegal, both as against the landowners on the line and the shareholders in the company. *Cohen v. Wilkinson*, 12 Beav. 125.

42. *Partial execution of line.—Public purpose.—Obligation to complete works.*—A railway company is not like a partnership for general trading purposes, in which one portion of the business may be abandoned; but it is a partnership for a public purpose, for effecting a work which it is a duty to complete. The obligation to complete the work is co-extensive with the authority to make it. *Cohen v. Wilkinson*, 12 Beav. 125.

43. *Partial execution.*—It appeared that a railway company had neither the intention, nor the means, nor any probability of obtaining the means, of completing the whole of the line authorised by their act; but they appeared to have the means and intention to complete a part only. An injunction was granted, at the instance of a shareholder, in the form of restraining the company from applying the funds in the construction of the part only, or otherwise than with the view and purpose of completing the whole. *Cohen v. Wilkinson*, 12 Beav. 138.

44. *Partial execution.—Amalgamated company's obligation to complete all the works.*—A company was authorised by three several acts to make three several railways, and raise three several sums for that purpose. A subsequent act declared, that the company mentioned in the three several acts were and ever had been the same, and not separate and distinct companies. Shares were issued for raising the whole capital for the three undertakings, without distinction, and calls were made: *Held*, that the company had no right to apply the funds in making one only of the railways, abandoning the others; but that a clear allegation not only of the abandonment, but that the directors intended so to misapply the funds in making a part only, was necessary to support a bill to prevent it. *Hodgson v. Earl Powis*, 12 Beav. 392.

45. *Partial execution of line.*—Where a railway company has undertaken to complete a line, or any series of lines, they are bound to complete the whole line or series of lines, and are not, without parliamentary authority, at liberty to abandon any portion of their undertaking.

Existing contracts for making part of the line are no answer to an application to prevent a railway company from making a portion of the line with an intention of completing less than the whole.

On an application for an injunction to prevent a railway company from making a portion only of their line, abandoning the rest, the Court would not be disposed to act in a severe and strict manner, if, by a small expenditure, a great benefit might result

to the shareholders, and a considerable advantage to the public.

Observations as to the discretion of the Court in such a case. *Graham v. Birkenhead, Lancashire and Cheshire Junction Railway Company*, 12 Beav. 460.

46. *Partial execution of line.*—Where a railway company has formed a portion of the line, but is unable to complete the whole, the Court exercises a discretion in granting an injunction; the effect of which will be to prevent that portion being made effective and beneficial to the public, and profitable to the shareholders. *Hodgson v. Earl Powis*, 12 Beav. 529.

47. *Partial execution of line.*—*Abandoning part of.*—It appeared very probable, that at the time of the filing of the bill, a company which was authorised to make 150 miles of railway, intended to complete 23 miles only, and abandon the rest. Upon a motion to restrain them, it appeared, that the company had since abandoned the whole. The Court was of opinion, that if the case had remained as it was at the time of the filing of the bill, the plaintiff would have been entitled to the injunction, but refused it, on the ground of the alteration in the existing circumstances, and gave no costs. *Logan v. Earl of Courtown*, 13 Beav. 22.

48. *Partial execution of line.*—*Abandonment of undertaking.*—*Purchase.*—A contract entered into by the promoters of a railway company with a landowner, to pay a certain sum for the portion of his lands to be taken for the intended railway and for consequential damage, in consideration of which agreement the landowner withdrew his opposition to the bill: *Held*, to be binding, although, after the passing of the act, the intention of making the railway be abandoned, and no part of the land be taken or required.

The fact that the railway company had by lapse of time, lost the powers which the legislature had given them to take lands, did not deprive them of the right to hold lands which they had acquired during the existence of their powers, nor did it release them from their obligations which they had then contracted with reference to the purchase of land. *Webb v. Direct London & Portsmouth Railway Company*, 9 Hare, 129.

49. *Shares.*—*Scrap certificate.*—*Assignment.*—The proprietor of a scrap certificate, whether registered or not (such proprietor not being in default), may sue on behalf of himself and all other proprietors of like certificates, and of the stock which they represent, or into which they are convertible, where the proprietors of certificates and stocks are very numerous; there being no incompatibility in the interest of the registered and unregistered proprietors to preclude the plaintiff from representing both classes of persons.

The original subscriber of the sum represented by the scrap certificate, the vendor of the same to the plaintiff, is not a necessary party to a suit, inasmuch as the contract between such original subscriber and the company gave the former the right to assign his interest and be discharged, and such interest was duly assigned by him to the plaintiff, and the plaintiff was accepted by the company in his stead. *Bagshaw v. The Eastern Union Railway Company*, 2 H. & T. 201; 2 M'N. & G. 389.

50. *Shareholder.*—*Lord Chancellor.*—An incorporated trading company filed a bill against the lord of a manor, and obtained an injunction against him to restrain him from taking possession of certain land to which he had established his right at law. A motion to dissolve the injunction was afterwards refused by the Lord Chancellor. At the hearing of

the cause the injunction was made perpetual, and a decree was made in favour of the plaintiff, which decree was afterwards confirmed by the Lord Chancellor, on appeal. The defendant was committed for a breach of the injunction. An application to discharge the order for committal, and the decree on the re-hearing, and to take the bill off the file, on the ground that the Lord Chancellor was a shareholder in the company, was refused, with costs. *Grand Junction Canal Company v. Dimes*, 2 H. & T. 92; 2 M'N. & G. 285.

51. *Partners.*—*Rights.*—The rights of shareholders in railway companies depend on their rights as co-partners, greatly modified, however, by the public duties and parliamentary conditions to which, as the constitution of their partnership, they subjected themselves. *Graham v. Birkenhead, Lancashire & Cheshire Junction Railway Company*, 12 Beav. 460.

52. *Shares.*—*Preference.*—At a meeting of a railway company on the 31st of May, 1848, it was resolved, that 1,055,000l. should be raised by 105,500 preference shares of 10l. each, on which a fixed dividend of 6l. per cent. should be paid. On the 7th of July, 1848, one of the dissentients filed a bill, praying a declaration that this resolution was unauthorised by the company's acts, and praying for an injunction against the issue of such shares, and no other specific relief. Upon a motion made on the 7th of August, 1848, for an injunction accordingly, it appeared by the affidavit of the secretary, that the preference shares had been offered to all the shareholders rateably, and had been taken to the amount of 777,770l., on which the first instalment had been paid, and that other shareholders had expressed their desire to accept other shares, and that there were only five dissentients: *Held*, that the motion involved substantially the whole matter in dispute in the cause; and (having regard to the balance of the possible mischief arising from interfering or not interfering on an interlocutory application) must be refused. *Fielden v. Yorkshire Railway Company*, 2 De G. & S. 531.

53. *Shares.*—*Preference.*—1st. A shareholder in an incorporated railway company filed a bill on behalf of himself and other shareholders, to restrain the directors from issuing preference shares, on the ground that they were about to be issued contrary to the company's acts, and for the purpose of constructing the original line instead of the branch (for which alone additional shares were to be created), and were intended to be distributed in a manner contrary to the directions of the act, which authorised the creation of addition shares. The bill, filed on the 22nd of September, stated, that the plaintiff on the 17th of September became aware of resolutions passed on the 12th of September, under which the preference shares were to be offered to the shareholders on the 23rd of September; but the bill did not otherwise shew that the plaintiff had not the means of procuring a suit to be instituted in the name of the corporation: *Held*, on the demurrers of the corporation and of the directors to the bill, that these demurrers could not be overruled, consistently with the principles stated in, or to be extracted from, *Mozley v. Alston and Exeter and Crediton Railway Company v. Buller*, whether the proceedings sought to be restrained were legal or not. 2nd. On a bill being amended, and stating that a majority of the shareholders supported the views of the directors, and refused to authorise the plaintiff, or any other person, to institute a suit in the name of the company: *Held*, allowing a demurrer, that it was still within the influence of the above authorities. 3rd. The corporation and the directors

having demurred separately, the Court refused to give costs of more than one demurrer. *Edwards v. Sharnbury and Birmingham Railway Company*, 2 De G. & S. 537.

54. *Shares new.—Mortgage.*—An incorporated railway company issued new shares, in pursuance of a resolution, declaring the purpose of such new issue to be the raising of a sufficient amount to pay off the existing mortgage and bond debts of the company.

The holder of some of the new shares filed a bill on behalf of himself and other holders of the shares against the directors of the company, alleging facts to show, and charging that they were about to apply the money paid in respect of the shares, otherwise than in conformity with the resolution, and praying for a declaration that the money ought to be applied according to the terms of the resolution, and for a specific performance of the agreement thereby entered into, and for an injunction: *Held*, allowing demurrers of the directors and the company, that the case fell within the authority of *Mozley v. Alton*, 1 Phill. 790, but the costs of only one demurrer were allowed. *Yettis v. Norfolk Railway Company*, 3 De G. & S. 293.

#### IX. MISCELLANEOUS CASES ON PRINCIPLES OF EQUITY.

1. *Acquiescence.—Interlocutory application.*—*Infants.*—Acquiescence by one of several co-plaintiffs, in the act complained of, precludes the interference of the Court upon an interlocutory application as much as upon decree; and the rule is the same, although some of the co-plaintiffs are infants. *Marker v. Marker*, 9 Hare, 15.

2. *Acquiescence where parties are not cognisant of their rights.*—Parties cannot be said to acquiesce in the claims of others, unless they are fully cognizant of their right to dispute them. *Marker v. Marker*, 9 Hare, 16.

3. *Act of Parliament.—Intention.*—The Court knows nothing of the intention of an act of Parliament, except from the words in which it is expressed, applied to the facts existing at the time. *Logan v. Earl of Courtown*, 13 Beav. 22.

4. *Agent.—Acting erroneously, but openly and avowedly.*—Semble, the cases in which a mere agent may be made a party to a suit, and costs prayed as relief against him, are limited to cases of fraud in the sense in which fraud is understood in a Court of Equity, to which the agent is a party, and do not apply to a case in which, though the agent acts erroneously, he acts openly and avowedly. *Marshall v. Sladden*, 7 Hare, 428.

5. *Aggregate fund.—Direction for shares to go over.*—The general rule is, that where a fund is given to a class of persons, with a direction that on the death of any of them their shares are to go over, the original, and not the accruing shares, will go over. But a testator may express a contrary intention, thus: where he shows an intention to keep the fund "aggregate" and unsevered, the rule does not apply. *Douglas v. Andrews*, 14 Beav. 347.

6. *Appointment.—Agreement between appointees not to disturb part which is invalid.*—Where there is an appointment to A. and B. by one instrument (and *a fortiori* by different instruments), the appointment to A. may be good, and the appointment to B. bad, and A. and B. may well agree between themselves that the bad appointment shall not be disturbed. *Harrison v. Randall*, 9 Hare, 397.

7. *Archbishop for time being.—Payment by railway.*—Dividends of investments of purchase-money paid into Court by a railway company for lands belonging to the Archbishop of Canterbury, ordered

to be paid to the Archbishop for the time being. *Ex parte Archbishop of Canterbury, in re East Lincolnshire Railway Company's Acts*, 2 De G. & S. 365.

8. *Arbitration.—Umpire.*—There may be circumstances in which an umpire may join in an inquiry with the arbitrators before the time of his acting arrives. *In re Elliot and The South Devon Railway Company*, 2 De G. & S. 17.

9. *Auditâ querelâ.—Not precluding bill in equity.*—Although the writ of auditâ querelâ is said to be "in the nature of a bill in equity to be relieved against the oppression of the plaintiff" (3 Black Com. 406); yet the defendant at law is not, either by the existence of that remedy, or by having unsuccessfully resorted to it, precluded from bringing his original bill in equity for relief against the plaintiff, in a case where the Court of law has set aside the writ in a summary proceeding. *Williams v. Roberts*, 8 Hare, 315.

10. *Benefice.—Judgment on warrant of attorney.*—*Injunction and receiver.*—A rector, who was also the patron of a living, gave warrants of attorney. As various creditors, who had mortgages on the advowson, subject to an agreement, that the judgment to be entered up by the first mortgagee should have priority over the rest, whenever execution should be issued: *Held*, that the agreement pointed so particularly to making the judgment charges on the living, that the Court could not give effect to it by granting an injunction and a receiver. *Long v. Storie*, 3 De G. & S. 308.

Case cited: *Metcalf v. Archbishop of York*, 1 Myl. & Cr. 547.

11. *Colonial representation.*—Colonial letters of administration will entitle the administrator to sue in this country, in respect of a sum of stock standing in the names of trustees, to a share of which the intestate was entitled. *M'Mahon v. Rawlings*, 16 Sim. 429.

12. *Copyright.—Encyclopaedias.*—The proprietor of an Encyclopædia, who employs a person to write an article for publication in that work, cannot, without the writer's consent, publish the article in a separate form or otherwise than in the Encyclopædia, unless the article was written on the terms that the copyright therein should belong to the proprietor of the Encyclopædia for all purposes. *Bishop of Hereford v. Griffin*, 16 Sim. 190.

13. *Copyright.—Alien.—Delay.—Injunction.*—The copyright of a work of an alien was sold to a British subject, who published it in this country in 1844. The copyright was infringed in 1849; but the state of the law then rendered it very doubtful whether the copyright was protected, and the purchaser merely protested against the infringement; but, in 1851, within a reasonable time after the decision of a case in the Exchequer Chamber had established the general question of copyright in an alien, he filed his bill, and moved to restrain the publication of the pirated work: *Held*, that there had been no such delay as to disentitle him to an injunction. *Buxton v. James*, 5 De G. & S. 80.

14. *Diocesan probate.—Bona notabilia.—Removal of goods after death of owner.*—Where a diocesan probate is proper with reference to the situation of the assets at the death, it remains so notwithstanding they may afterwards be rightfully or wrongfully removed out of the diocese. *In re Spencer's Trust*, 9 Hare, 410.

15. *Equitable assignment.—Of funds or property to be subsequently acquired.*—In equity, there may be a valid assignment of funds or property to be subsequently acquired, even in cases where the

acquisition depends on contingencies and possibilities only. *Rodick v. Gandell*, 12 Beav. 325.

Case cited in the judgment: *Burn v. Carvalho*, 4 Myl. & C. 693.

16. *Equitable assignment.—Direction by creditor to debtor to pay debt to third person.*—A creditor, by ordering or directing his debtor to pay the debt to another person, may, in equity, effectually assign the debt to such other person. *Rodick v. Sandell*, 12 Beav. 525.

17. *Equitable assignment.—Military commission.*—An officer, on the sale of his commission, wrote to his army agents, directing them to pay the balance received to A. B., a creditor. The letter was delivered to them, and they authorised A. B. to draw for 408*l.* the next month, when the vacancy would be filled up: *Held*, that this constituted a valid equitable assignment. *L'Estrange v. L'Estrange*, 13 Beav. 281.

18. *Equitable interest.—Where conveyance void at law.*—Where an equitable interest in an estate has been conveyed by a person of unsound mind to a party taking without fraud or notice of the unsoundness of mind, and the case is one in which the deed would be void at law on the ground of the lunacy, equity will relieve against the conveyance by the lunatic. *Price v. Berrington*, 7 Hare, 394.

Case cited in the judgment: *Niell v. Morley*, 9 Vea. 482.

19.—*Family arrangement.—Advances of different estate not satisfaction to portions.*—Payments or advances to children out of an estate, other than that from which they derive portions, are not to be taken as made in or towards satisfaction of such portions. *Douglas v. Willis*, 7 Hare, 328.

Cases cited in the judgment: *Roberts v. Dixall*, 2 Eq. Ca. Ab. 668, pl. 19; *Walpole v. Lord Conway*, Barn. Ch. R. 156, 157; *Sir W. Davies' case*, 5 Vin. Abr. 292, pl. 58.

20. *Family arrangement.—Carrying into effect.—Variation of effect of deed.*—Variation of the effect of a deed, made for the purpose of carrying into effect a family arrangement, where it contained a declaration of right inconsistent with the actual rights of the parties, and there was no evidence that the inconsistency was known to or contemplated by the parties or their solicitors, or that their actual rights were intended to be altered. *Ashurst v. Mill*, 7 Hare, 502; *Mill v. Ashurst*, *ib.* 502.

21. *Family arrangement.—Modification of terms.*—Power of the parties to a family arrangement, stipulating for the interests of other members of the family, afterwards to modify the terms of the arrangement. *Heap v. Tonge*, 9 Hare, 103.

22. *Feme covert.—Equity to settlement.—Discretion of Court as to amount.*—The amount to be settled on a married woman under her equity to a settlement is discretionary with the Court, and depends on the particular circumstances of each case. In the present instance, there had never been any settlement, and the husband was insolvent; he had also received out of Court, with the consent of his wife, moneys belonging to her, and part of the same estate to double the amount of the fund which formed the subject of the petition. *Scott v. Spaskest*, 3 M'N. & G. 599.

Cases cited in the judgment: *Bratt v. Greenwell*, 3 Y. & C. 230, 232; *Gardner v. Marshall*, 14 Sim. 575.

23. *Foreclosure.—Redemption Suit.—Partition.*—A decree for a partition is not properly incident to a foreclosure or redemption suit, in such a way that

the owners of the equity of redemption can be allowed to insist on it against the will of the mortgagee, who has no interest in the question. *Watkins v. Williams*, 3 M'N. & G. 622; *Haward v. Church*, *ib.*

24. *Feme covert devise of estate to separate use.—Specific performance by husband at her death.*—An estate was devised to a feme covert for her separate use. She entered into a contract for sale, and died, having devised the estate to her husband, who sued for a specific performance. The purchaser objected that the feme covert had neither power to enter into a contract or to devise the estate. The Court declined to compel a specific performance in the absence of the heir. *Harris v. Mott*, 14 Beav. 169.

25. *Foreigners.—Jurisdiction to enforce right of patentee against.*—Foreigners in this country, as well as British subjects, are liable to actions for the injury done by their infringing upon the sole and exclusive right granted by the Crown to patentees of inventions in conformity with the law and constitution of this country; and the powers of the Court of Equity, which are founded on the insufficiency of the legal remedy, must be enforced against them as well as against British subjects. *Caldwell v. Vanolisengen*, 9 Hare, 415; *Same v. Verbeck* *ib.*; *Same v. Rolfe*, *ib.*

26. *Foreigners.—Law of country in which they are, and adopting their own law.*—If, in any case, the rights of foreigners out of their own country are governed by their own laws, it is not by the force of those laws themselves, but by the law of the country in which they may be, adopting those laws as part of their own law for the purpose of regulating such rights. *Caldwell v. Vanolisengen*, 9 Hare, 426; *Same v. Verbeck*, *ib.*; *Same v. Rolfe*, *ib.*

27. *Fraud.—Effect of charge of fraud not being supported.*—It is an established doctrine of equity, that where a bill sets up a case of fraud as a ground for relief, and such fraud is not proved, the plaintiff is not entitled to relief by establishing some other fact independent of the fraud, which might of itself create a title to relief under a head of equity distinct from that applicable to the case of the fraud alleged. *Price v. Berrington*, 3 M'N. & G. 486.

28. *Fraud.—Award.—Answer of arbitrator.—Discovery.*—An arbitrator whose award is impeached on the ground of fraud cannot, by denying the fraud generally, protect himself from answering the interrogatories as to specific facts by which the fraud is alleged to be shown. *Padley v. The Lincoln Waterworks Company*, 2 H. & T. 295; 2 M'N. & G. 68.

29. *Fraud.—Where not proved.—Dismissal of bill.*—The application of the rule of Court to dismiss a bill in which the relief is founded upon allegations of fraud, if such fraud be not proved, depends not upon the use or omission in the bill of the word "fraud," but upon the fact, whether the charges upon which the relief is sought, are in their nature such as this Court regards as constituting fraud. *M'Calmont v. Rankin*, 8 Hare, 15.

30. *Gift over.—Accruing share.—Accruing share held to go over with the original share by force of the words "part share and interest."*

A testator gave his estate to one for life, with remainder to her children equally, with gift over (in case of the death of any child in the life of the tenant for life) of the "part and parts, share, and shares, and interests" of such child to his issue: *Held*, that the gift over comprised the accrued as well as the original share. *Douglas v. Andrews*, 14 Beav. 347.

Case cited in the judgment: *Doe Dem. Clark v. Birkhead*, 4 Exch. R. 110.

31. *Heir.—Suit by heir of entail in possession.*—Substituted heirs of entail.—In a suit by the heir of entail in possession, entitled under a Scotch entail to a portion of the rents of the entailed estates, the other portion of such rents being directed to be accumulated during pupillarity, and invested in land to be conveyed to the persons taking in succession under the same entail, the substituted heirs of entail are necessary parties. *Beattie v. Johnstone*, 8 Hare, 169.

32. *Infant.—Agreement to release executors entered into three months after infant came of age.*—An agreement to release executors entered into about three months after an infant came of age, and carried into effect about three months subsequently by deed, set aside; the agreement having been entered into in the absence of proper independent advice and assistance, and without a proper opportunity of examining the accounts, and the deed having been executed under the same influence, and without a proper and necessary examination and verification of the accounts. *Thorner v. Sheard*, 12 Beav. 589.

33. *Infant.—Suit for account against tutors in Scotland.*—The existence of a suit of multipointing and exoneration, brought by tutors in Scotland, in respect of their receipts of the real estate of the infant in that kingdom, constitutes no objection to a decree for an account of the same estates against the same parties, in this Court, in a suit by the infant, in which the tutors have appeared. *Beattie v. Johnstone*, 8 Hare, 169.

34. *Insurance Company.—Contract for life insurance.—Inconsistency with the rules.*—An insurance company having had the chance of a contract of life insurance turning out in their favour, cannot afterwards be permitted, on the ground of the inconsistency of the contract with their rules, to escape from it. *Collett v. Morrison*, 9 Hare, 162.

35. *Insurance Company.—Non-preparation of policy in conformity with agreement.*—Circumstances in which insurance companies preparing and issuing policies not in conformity with the agreement upon which the insurance was accepted, may be liable in equity on the ground of fraud. *Collett v. Morrison*, 9 Hare, 176.

Case cited in the judgment: *Exparte Wright*, 19 Ves. 257.

36. *Ignorance of facts.—Family compromise, setting aside.*—To render a family compromise binding, there must be an honest disclosure by each party to the other of all such material facts known to them relative to the rights and title of either, as are calculated to influence the judgment in the adoption of the compromise; and any advantage taken by either of the parties of the known ignorance of the other of such facts would render the compromise void in equity and liable to be set aside. *Smith v. Piccombe*, 3 M'N. & G. 653.

Cases cited in the judgment: *Gordon v. Gordon*, 3 Swanst. 400; *Harvey v. Cooke*, 4 Russ. 34; *Groves v. Perkins*, 6 Sim. 576; *Pickering v. Pickering*, 2 Beav. 31.

37. *Jurisdiction in matters of account.*—The authorities shew that there are many cases in which a Court of Equity will entertain jurisdiction in matters of account, where, if the party making the claim had proceeded at law, the Court would not, if applied to for that purpose, withdraw the matter from the legal jurisdiction. *South Eastern Railway Company v. Brogden*, 3 M'N. & G. 8.

38. *Jurisdiction.—Vice-Chancellor of England.*—The Vice-Chancellor has no jurisdiction to discharge, for irregularity, an order made, as of course, at the Rolls, though in a suit attached to his own Court. *Stuart v. Stuart*, 17 Sim. 44.

39. *Jurisdiction.—Lord Chancellor and Master of the Rolls.—Encumbered Estates Act (Ireland).*—Whether the Master of the Rolls has jurisdiction to enforce the orders of the Commissioners for the Sale of Incumbered Estates in Ireland? *quære*. In *re Scott esparte Barton*, 12 Beav. 361.

40. *Jurisdiction.—Injunction to restrain execution on judgment at law.*—Jurisdiction in equity to restrain execution upon a judgment against a defendant at law, on the ground of a subsequent release by the plaintiff at law of his claims under the judgment for a valuable consideration, paid by the defendant at law, notwithstanding that a rule obtained by the defendant at law to set aside the judgment on the ground of such subsequent release, had been discharged, and a writ of *audita querela* on the same ground had been set aside by the Court of law. *Williams v. Roberts*, 8 Hare, 315.

41. *Jurisdiction under statute.*—Where a summary jurisdiction is created by Parliament, it must be deemed to be the intention of the legislature (in the absence of any restriction) that the proceedings under it when resorted to shall have the same force and effect as the proceedings under the ordinary jurisdiction for which it is substituted. *Att.-Gen. v. Bishop of Worcester*, 9 Hare, 328.

Case cited in the judgment: *Hyde v. Edwards*, 1 M'N. & G. 413; 1 H. & T. 552.

42. *Joint tenants.—Survivorship.*—The interest on funds was given to husband and wife during their lives, or the life of the survivor. In the suit, the fund had been carried over to the account of "the husband and wife their stock account," and the dividends were to be paid to them and to the survivor: *Held*, that the dividends unreceived during their joint lives belonged to the survivor. *Laprimandays v. Teissier*, 12 Beav. 206.

43. *Legacy duty.—Lighthouse.*—The profits arising from the tolls received under a grant of a lighthouse, are in the nature of realty, and not liable to either probate or legacy duty. *The King v. Coke*, 5 B. & C. 797, explained. *Att.-Gen. v. Jones*, 1 H. & T. 493; 1 M'N. & G. 574.

44. *Legatee of long annuities when entitled to dividends.*—General legatee of "the sum of £ long annuities," held not entitled to dividends accruing before the expiration of a year from the testator's decease. *Collyer v. Ashburner*, 2 De G. & S. 404.

45. *Legacy.—Purchase of.—Duty.*—A *certain* *trust* of a portion of the proceeds of a contingent reversionary interest in an estate directed to be sold, in case of and upon the happening of the contingency, bequeathed his reversionary interest by his will to a legatee, who sold the same before the happening of the contingency. The executor was a party to the assignment, to obviate all questions as to the existence of debts of the *certain* *trust*, and the purchase-money was thereby expressed to be paid to him, but was in fact paid to the legatee by the purchaser: *Held*, that the executor had no claim on the purchaser to be reimbursed the legacy duty, which, after the happening of the contingency, he was compelled to pay on the full value of the share. *Farwell v. Seale*, 3 De G. & S. 359.

46. *Lunatic.—Revisor.—By heir at law and administrator.—Account.*—On revisor by a party who was both heir-at-law and administrator of a lunatic, in a suit to set aside a conveyance made by the lunatic of his estate, it was held that the plaintiff had no title to the estate as heir-at-law, but that, as administrator of the lunatic, he was entitled to an account of the rents and profits during the life of the lunatic. *Pries v. Berrington*, 7 Hare, 394.



47. *Manorial rights.—Trial at law.—Injunction.*—Suit by a copyholder against a tenant of lands within the manor, to restrain the defendant from taking stone from lands in his occupation. The defendant by his answer alleged, that it was and had been a common practice in the manor to remove the stone which laid immediately under the surface, for the benefit of cultivation. At the hearing, the Court made a decree for a perpetual injunction, the defendant declining to try his right to take the stone in an action at law to be brought against him by the plaintiffs.—*Cuddon v. Morley*, 7 Hare. 202.

48. *Mistake.*—*Contract or conveyance executed in ignorance and under mistake.—Relief from.*—A plaintiff may be entitled to relief from a contract or conveyance on the ground of ignorance and mistake, although the defendant, with whom he dealt, and against whom relief is sought, was also in ignorance and under mistake, the contract or conveyance not being made upon the principle of compromising doubtful rights. *Reynell v. Sprye*, 8 Hare, 222; *Sprye v. Reynell*, ib.

Cases cited in the judgment: *Stockley v. Stockley*, 1 V. & B. 23; *Harvey v. Cooke*, 4; *Russ*, 34.

49. *Monopoly.—Grant of the Crown and the statute of monopolies.*—The Crown has always exercised a control over the trade of the country; and though restrained by the common law and the statute of Monopolies (21 Jac. 1, c. 3), within reasonable limits, the Crown might grant the exclusive right to trade with a new invention for a reasonable period. The Stat. 21 Jac. 1, c. 3, did not create but controlled the power of the Crown in granting to the first inventors the privilege of the sole working and making of new manufacture. *Caldwell v. Vanolissengen*, 9 Hare, 415; *Same v. Verbeck*, ib.; *Same v. Rolfe*, ib.

50. *Negative agreement.*—*All the terms not enforceable.*—Held, that this Court will grant an injunction restraining the defendants for acting contrary to a negative agreement, although it cannot specifically enforce the performance of the whole of the agreement.—*Great Northern Railway Company v. Manchester, Sheffield, and Lincolnshire Railway Company*, 5 De G. & S. 138.

Case cited in the judgment: *Dietrichsen v. Cabburn*, 2 Phill. 52.

51. *Nuisance.—Bell-ringing.*—Injunction granted, after a trial at law, to restrain the ringing of the bells of a Roman Catholic church, so as to occasion any nuisance, disturbance, and annoyance to the plaintiff, who resided very near to the church. *Sollau v. De Held*, 2 Sim. N. S. 133.

52. *Nuisance.—Attorney-General need not be a party.*—A bill may be filed to restrain a public nuisance, without making the Attorney-General a party, if the plaintiff sustains special damage from the nuisance. *Sollau v. De Held*, 2 Sim. N. S. 133.

Cases cited in the judgment: *Attorney-General v. Forbes*, 2 Myl. & Cr. 123; *Crowder v. Tinkler*, 19 Ves. 617; *Spencer v. London & Birmingham Railway Company*, 8 Sim. 193; *Sampson v. Smith*, 8 Sim. 272; *Haines v. Taylor*, 10 Beav. 75; 2 Phill. 209; *Walter v. Selfe*, 15 Jur. 416.

53. *Nuisance.—Injury to parishioners by churchwardens.*—A bill was filed by a single parishioner against some of the churchwardens of the parish, alleging an intention on the part of the defendants to execute works in the church which would be inju-

rious to himself, and praying an injunction. The plaintiff did not allege any right of property in a particular pew, but did allege that he was a parishioner, and that he was in the habit of attending divine service in the church.

*Quære*, whether this is a private nuisance, and whether such a bill can be sustained by a single parishioner against the churchwardens? *Woodman v. Robinson*, 2 Sim. N. S. 204.

54. *Partition.—Manor.*—The partition of a manor may be compelled in equity. *Hansbury v. Hussey*, 14 Beav. 152.

Cases cited: *Sparrow v. Fiend*; *Lay v. Cox*, 1 Dickens, 348.

55. *Pencil signature to contract sometimes final.*—A signature in pencil is not necessarily deliberative, and may be equally binding on the party making it as the signature if written in another manner, would be. *Lucas v. James*, 7 Hare, 419.

56. *Perishable property given in succession.*—The rule laid down in *Howe v. the Earl of Dartmouth*, 7 Ves. 137 a, is, that where property of a perishable nature is given to be enjoyed in succession, the object of the testator can only be effected by converting the property into permanent annuities, and giving each person in succession, the dividends of the fund. This rule prevails, unless there can be gathered from the will some expression of intention that the property is to be enjoyed *in specie*, and which it is incumbent on those contesting the application of the rule to point out.

Modern cases allow of small indications of intention to prevent the application of the rule: but the mere absence of any direction to convert is insufficient.

Upon the construction of a will, *held*, that the tenant for life of a residue was not entitled to the perishable property *in specie*. *Morgan v. Morgan*, 14 Beav. 72.

57. *Policy of insurance.—Deviation.—Delivery up of a written instrument.*—Bill filed by the underwriter of a policy of insurance on a ship, to have the policy delivered up, on the ground of deviation and unseaworthiness, but only deviation was proved. Bill dismissed. *Thornton v. Knight*, 16 Sim. 509.

58. *Policy of life insurance.—Rectification.*—If upon a proposal and agreement for a life insurance, a policy be drawn up by the insurance office in a form which differs from the terms of the agreement, and varies the rights of the parties assured, equity will interfere and deal with the case on the footing of the agreement, and not on that of the policy. *Collett v. Morrison* 9 Hare, 162.

Case cited in the judgment: *Mottena v. London Assurance Company*, 1 Atk. 545.

59. *Poor law guardians restrained from paying out of poor-rate expense of unsuccessful application to Parliament.*—The guardians of the poor of Southampton restrained from paying out of the poor-rates the expenses incurred by them in making an unsuccessful application to Parliament for an act to authorise them to rate the owners instead of the occupiers of small tenements. *Attorney-General v. Guardians of the poor of Southampton*, 17 Sim. 6.

60. *Power of appointment.*—The Court will not entertain a suit to set aside an appointment of a part of certain trust funds as a fraud upon the power, when it appears that another appointment not impeached by the bill, was made of funds subject to the same power, in which regard was had to the appointment complained of, and the object was to equalize the interests of the several appointees; for the Court will not undo part of an entire transac-

tion, the other parts of the same transaction not being brought within its jurisdiction. *Harrison v. Randall*, 9 Hare, 397.

61. *Principal and agent.*—*Agent cannot gain adverse title to his principal.*—An agent cannot gain an adverse title unless he can very distinctly show that what he has done is in respect of title, and not of his agency.—*Attorney-General v. Corporation of London*, 2 H. & T. 1; 2 M.N. & G. 247.

62. *Principal and agent.*—*Bill for account.*—*Where remedy at law and no fraud.*—A bill for an account by a principal against his agent, is not sustainable where the transaction to which it relates, is a single transaction, not tainted with fraud, and the plaintiff has a remedy at law. *Navulshaw v. Brownrigg*, 1 Sim. N. S. 573.

63. *Principal and surety.*—*Misrepresentation or non-communication of circumstances.*—The creditor must make a full, fair, and honest communication to the surety of all circumstances connected with the transaction to which the suretyship is to be applied which are calculated to influence the discretion of the surety in entering into the required obligation.

How far is the creditor responsible for the misrepresentation or non-communication of material circumstances by the debtor where there is no communication between the creditor and the surety, and particularly in a case where the creditor desires his debtor to procure the suretyship contract, and abstains from all communication with the surety, *quere*. *Owen v. Homan*, 3 M.N. & G. 378.

Cases cited in the judgment: *Pidcock v. Bishop*, 3 B. & C. 605; *Stone & Compton*, 5 Bing. N. C. 142.

64. *Principal and Surety.*—*Discharge of surety by giving time to principal debtor.*—The obligor in a bond for 1,000*l.* to his partner in business, became insolvent, and they made a composition with their creditors, which the obligee in the bond guaranteed, and he then promised the obligor to relinquish his debt on the bond. The compromise with the creditors could not have been carried out if the obligee had attempted to enforce his bond. *Held*, that the transaction between the obligor and obligee amounted to such a contract as would have the effect of giving time to the principal, and that, consequently, the sureties in the bond were discharged. *Cross v. Sprigg*, 2 H. & T. 233; 2 M.N. & G. 113.

65. *Principal and surety.*—*Reserving remedies against surety.*—Sureties are not discharged by giving of time to the principal debtor, in cases where the remedies against the sureties are expressly reserved. *Owen v. Homan*, 13 Beav. 196.

Cases cited in the judgment; *English v. Darley*, 2 Bos. & P. 62; *ex parte Gifford*, 6 Ves. 808; *Nicholson v. Revill*, 4 A. & E. 675; *Boulbee v. Stubbs*, 18 Ves. 20; *Bank of Ireland v. Beresford*, 6 Dow, 238; *ex parte Glendinning*, Buck, 519.

66. *Priority of incumbrance.*—*Seemle* where a party who has a prior equitable lien upon a fund, receives notice of a second incumbrance made without any previous communication with or inquiry from him, but conceals his prior equity, and makes payments to the second incumbrancer inconsistent with it, he will be postponed. *Mangles v. Dixon*, 1 H. & T. 542; 1 M.N. & G. 487.

67. *Public policy.*—*Contract against.*—*Relief against.*—Parties to a contract which is against public policy or illegal, are not always regarded as being in *pari delicto*, but public policy is sometimes considered as advanced by allowing either, or the more excusable of the parties, to sue for relief

against the transaction. *Reynell v. Sprye*, 8 Hare, 275 n.; *Spry v. Reynell*, ib.

68. *Physician attends testator on his promise to pay or leave equivalent in will.*—A physician attended the testator for many years without any remuneration. He stated "that the testator had promised to pay him for his services, or leave him an equivalent." *Held*, that the physician had no claim against the estate, and a payment made to him by the executor was disallowed. *Smallcross v. Wright*, 12 Beav. 558.

69. *Real estate.*—*New River shares.*—A testator being possessed of a part of a share in the New River Company, by his will, executed so as to pass real estate, gave all his property to J. H., in trust for purposes and legacies the testator should make in any codicil. The testator, by a codicil not attested so as to affect real estate, gave several pecuniary legacies, and died without otherwise disposing of his property; the testator left no heir. Upon a question between the devisee of J. H. and the Crown: *Held*, that New River shares were real estate for all purposes, and the Court declared that J. H. took the shares beneficially. *Davall v. New River Company*, 3 De G. & S. 394.

Case cited in the judgment: *Burgess v. Wheate*, 1 Blac. Rep. 123; 1 Eden, 177.

70. *Receiver.*—*Where refused.*—*Deeds of doubtful construction.*—The granting of a receiver is a matter of discretion to be governed by a view of the whole circumstances of the case, one of such circumstances being the probability of the plaintiff being ultimately entitled to a decree. Thus a receiver was refused in a case where important points arose upon the construction of deeds, that construction being attended with considerable doubt and difficulty. *Owen v. Homan*, 3 M.N. & G. 378.

Case cited in the judgment: *Bentinck v. Willink*, 2 Hare, 1.

71. *Receiver.*—*When appointed.*—*Question to be decided at law.*—Where the right to property which is the subject of litigation depends on questions to be decided at law, the jurisdiction in equity to grant a receiver is only to be exercised when there is a reasonable probability of success, and the property, the subject of the suit, is in danger. *Bainbrigg v. Baddeley*, 3 M.N. & G. 413.

72. *Rector.*—*Privilege as to waste.*—There is no principle of law on which a rector can obtain more extensive privileges as to waste than an ordinary tenant for life. *Duke of Marlborough v. St John*, 5 De G. & S. 174.

Case cited in the judgment: *Strachy v. Francis*, 2 Atk. 217.

73. *Release.*—*Giving effect to intention of parties.*—Principles of the Court in giving effect to the intention of the parties to a general release, with reference to the restrictive clauses which it contains or to the purpose for which it is made. *Squire v. Ford*, 9 Hare, 55.

Cases cited in the judgment: *Morris v. Wilford*, 2 Show. 47; *Payler v. Homersham*, 4 M. & S. 423.

74. *Reversionary estate.*—*Inadequate consideration.*—In the case of a bill filed to set aside the sale of a reversionary interest in a freehold estate, dependent on the tenant for life dying without issue, he being at the time of the sale in his 57th year, and his wife in her 54th year, and there never having been any issue of the marriage except a still-born child many years previously to the time of the sale, a reference was directed to the Master to ascertain the value of the reversionary interest at

the time of the sale. *Boothby v. Boothby*, 2 H. & T. 214; 1 M.N. & G. 604.

Case cited in the judgment: Lord Aldborough v. Trye, 7 C. & F. 437.

75. *Sale.—Conduct of.—Jurisdiction.*—Under a decree, directing the sale of an estate, but not directing by whom the sale shall be conducted, the Master is not bound to give the conduct of the sale to the plaintiff, but may, in his discretion, if he considers it more beneficial to the estate, give the conduct of the sale to other parties.

Grounds on which the conduct of a sale, under the decree of the Court, may properly be given to parties other than the plaintiff. *Dixon v. Pyner*, 7 Hare, 331.

76. *Savings' bank.—Trusts and cestui que trust.—Voluntary gift.—Executory trust.*—A. B., after depositing in his own name, in a savings' bank to the full extent allowed, made further deposits to answer account in the name of himself and sister, but nominally as trustee for her. By the terms of the act of Parliament he retained a control over the fund: *Held*, that the sister was not entitled, the Court thinking that the object was to evade the act, and not to create a trust in favour of the sister. *Fild v. Lonsdale*, 13 Beav. 78.

77. *School.—Covenant nuisance.—Waiver.*—The owner of an estate covered it with houses, and sold some of them, subject to a covenant not to carry on any trade, business, or calling, therein, or to otherwise use or suffer the same to be used, to the annoyance, nuisance, or injury of any of the houses on the estate.

*Held*, that the carrying on of a girl's school in one of the houses was a breach of the covenant; and that the covenantee had not waived the benefit of the covenant, though he had permitted other houses held under the like covenant to be used as schools. *Kemp v. Sober*, 1 Sim. N. S. 517.

Case cited in the judgment: *Doe v. Keeling*, 1 Man. and Selw. 95.

78. *Separate uses.*—A. demised lands to B. and C., in trust, to permit his wife, and such person and persons, and their executors and administrators, as she should, by her will, bequeath the same to, to take to his and their own use, the rents of the lands, during the term, exclusively, and notwithstanding his wife's then or any future coverture, and not to be subject to the control or disposal of any future husband; and A. covenanted for the quiet enjoyment of the lands by his wife during the term.

*Held*, that the wife was the *cestui que trust* of the lands for the whole of the term, and not merely for so many years of it as she should live, with remainder to such persons as she should appoint by her will. *Clover v. Hall*, 16 Sim. 568.

79. *Sequestration.—Reversionary interest.*—A sequestration having issued against a defendant, who was entitled to a reversionary interest in stock, standing in the name of the Accountant-General in another cause, the Court gave the sequestrators liberty to sell that interest. *Cowper v. Taylor*, 16 Sim. 314.

80. *Settled accounts.—Relief in reference to.*—Principles on which the Court deals with settled accounts in reference to granting relief either by a decree to surcharge and falsify, or by a decree to take an open account.

In a case where the accounting party was the solicitor or agent of the party sought to be charged, and it appeared that an item of 600*l.* was inserted for professional charges in the account which it was sought to treat as settled, no bill of

costs having been delivered, and the 600*l.* exceeding by 75*l.* the sum really due: *Held*, that this was not such an error as could be set right by a decree to surcharge and falsify, but that the account must be dealt with as an open account. *Coleman v. Mellors*, 2 M.N. & G. 309.

81. *Set off.—Demands existing in separate rights.—Executor and trustee of legacy and residuary legatee.*—Cross demands, existing in separate rights, are not, in equity (except under special circumstances), allowed to be set off one against the other; and therefore an executor and trustee of a legacy, who was also the residuary legatee, and had become a creditor of the husband and administrator of a deceased legatee, was not, in the absence of any special agreement, allowed to set off his debt against the legacy to which the husband (having survived his wife the legatee) was, as such administrator, entitled. *Freeman v. Lomas*, 9 Hare, 109.

Cases cited in the judgment: *Chapman v. Derby*, 2 Vern. 117; *Jones v. Mossop*, 3 Hare, 568; *Bishop v. Church*, 3 Atk. 691; *Medlicot v. Bower*, 1 Ves. 207.

82. *Set off.—Equitable rights.*—The equitable right of set-off is not derived from or dependent upon any statutory right, but is founded on the Roman law—semble. *Freeman v. Lomas*, 9 Hare, 113.

Cases cited in the judgment: *Curson v. African Company*, 1 Vern. 121; *Peters v. Soame*, 2 Vern. 428; *Downam v. Matthews*, Prac. Chan. 589; *Jeffs v. Wood*, 2 P. Wm. 128; *Whitaker v. Rush*, Amb. 407.

83. *Set off.—Different rights.*—The Court has, on slight circumstances, presumed the existence of an agreement to set off one against another cross demand, although existing in different rights; but such an agreement will not be presumed without some circumstances from which it might be inferred.—Semble. *Freeman v. Lomas*, 9 Hare, 114.

84. *Set off.—Equitable and legal demands.*—Where one demand is equitable and the other legal, there may be set off in equity, if there would be set-off at law had both the demands been legal. *Freeman v. Lomas*, 9 Hare, 116.

85. *Sheriff.—Execution f. fa. not entitled to a writ of f. fa. issued by the Court of Chancery under l & 2 Vict. c. 110.* is not entitled to an injunction to restrain proceedings against him by strangers to the suit, by analogy to the case of receivers or sequestrators appointed by the Court, or to the practice at law under the Interpleader Act, or otherwise. *Rock v. Cooke*, 2 De G. & S. 493.

86. *Ship owners.—Powers and duties of managing owners.—Jurisdiction.—Contract.*—No question arises as to the jurisdiction of this Court in enforcing the rights of some against the other part owners of a ship, with regard to the management of the ship, and the possession of the certificate of registry, where those rights are regulated by an agreement entered into between all the owners of the ship.

Powers and duties of the managing owners of a ship as between themselves and the other part owners.

Construction of an agreement entered into by the part owners of a ship, with regard to the management of a ship and the allowances for brokerage and commission. *Darby v. Baines*, 9 Hare, 369.

87. *Stamp.—Post-dated cheque.*—Where a suit was instituted for the delivery up of a cheque given as

part of the consideration for a purchase, which was alleged to have been rescinded, and it appeared that the cheque was post-dated and not stamped, the Court, on that ground, refused to interfere. *Carvington v. Pell*, 3 De G. & S. 512.

88. *Statute of limitations.—Husband and wife.—Creditor's suit.*—In the joint answer of a husband and wife to a creditor's bill for payment out of an estate, of which the wife was administratrix, the wife alone set up the statute of limitation as a defence of the suit: *Held*, that the interest of the wife was not so merged in the coverture that the Court would disregard her separate defence, and that the statute was, for the protection of the estate, sufficiently pleaded by the wife alone. *Becking v. Morphew*, 8 Hare, 129.

Case cited in the judgment: *Shewen v. Vanderhurst*, 1 R. & Myl. 347.

89. *Tenant for life.—Committing waste.—Trustee.*—An equitable tenant for life being in possession of the estate, he and his lessee had committed waste and refused to permit the trustee to examine the condition of the land. The trustee having brought ejectment, the Court under the circumstances, refused to continue an injunction to restrain the action, even on the plaintiff undertaking to cut no more timber, and to permit the inspection. *Pugh v. Vaughan*, 12 Beav. 517.

90. *Tenant for life.—Improper sale of stock.—Liability of trustee to replace.*—An executrix and tenant for life unnecessarily and improperly sold out a sum of stock; a common decree for an account was made against her representative: *Held*, that her estate was liable to replace the stock and dividends, and that relief might be had on further directions, though the particular matter was not changed by the bill. *Davenport v. Stafford*, 14, Beav. 319; *Friedy v. same, ib.*; *Charlesworth v. Mannors, ib.*

Case cited in the judgment: *Sadler v. Lee*, 6 Beav. 324.

91. *Tenant for life.—Bonus.—Dividend.*—Tenant for life of bank stock held entitled to a bonus of one per cent. directed to be made out of the interest and profits on the capital stock of the bank. *Preston v. Melville*, 16 Sim. 163; *Melville v. Preston, ib.* 163.

92. *Tenant for life.—Interest.*—Interest at 4 per cent. allowed to the tenant for life of a trust fund upon the amount found due to her for arrears of interest of the fund. *Willcocks v. Butcher*, 16 Sim. 306.

93. *Testator's liability for furniture burnt to prevent contagion from malignant fever of which he died.*—The testator, while on a visit died of malignant fever. The furniture was, by the advice of the medical advisers, destroyed, and the friend was obliged to remove from his house: *Held*, that the testator's estate was liable for the damage. *Shallcross v. Wright*, 12 Beav. 558.

94. *Timber.—Question of fact.—To be for shelter or ornament.*—In the preservation of ornamental timber, the protection of the Court is confined to timber planted and left standing for shelter or ornament; and the question, whether the protection should be extended to particular timber, is, therefore, one of fact, and the determination must depend upon the evidence which can be collected to establish the fact. *Marker v. Marker*, 9 Hare, 1.

95. *Trade Marks.—Injunction.*—The plaintiff, Thomas Holloway, sold a medicine as "Holloway's pills." The defendant, Henry Holloway, commenced selling pills as "H. Holloway's pills, but

in boxes, &c., similar to the plaintiff's, with a view of passing off his pills as the plaintiff's. He was restrained by injunction. *Holloway v. Holloway*, 13 Beav. 209.

96. *Trust.—Enforcing execution against persons having possession of profits.*—Trusts may be constituted not merely by direct declaration of trust, and also by the constructive operation of the consequence flowing from the acts of parties. Thus, equity will enforce the execution of a trust, not only against the trustees themselves, but against all persons who obtain possession of the property affected by the trust, provided they had notice of it. *Pooley v. Budd*, 14 Beav. 34.

97. *Waste.—Equitable.—Controlling power of unimpeachable waste.*—The Court, by applying the doctrine of equitable waste, controls and restrains the excessive use of the legal power incident to an estate unimpeachable at waste, but with reference only to the presumed will and intention of the party by whom the power was created. *Marker v. Marker*, 9 Hare, 1.

98. *Water-right.—Acquiescence.*—What conditions are required in order to induce a Court of Equity to grant an injunction to restrain the infringement of a right acquired by long user, to use the water of a stream for certain purposes. *Wood v. Sutcliffe*, 2 Sim. N. S. 163.

99. *Ship owner.—Lien on proceeds of sale of ship.—Notice.*—Moneys were advanced by the plaintiffs to *M. M.*, upon an agreement that they should be reimbursed by the proceeds of a ship then about to be launched in New Brunswick, and of her cargo, which were to be consigned by *W. W.* to the plaintiffs for sale, and a bill of lading of the cargo, and a power of attorney from the registered owner, enabling the plaintiff to sell the ship, was transmitted by *M. M.* to the plaintiffs. *M. M.* afterwards transferred the ship and cargo to the firm of *C. and G.* The ship was therefore registered in the names of *C. and G.* *C. and G.* sold the ship and cargo to the firm of *R. and P.*, and the ship was then registered in the name of *P.* A new master was appointed, and a new bill of lading signed, and the ship and cargo were consigned by *R. and P.* (with a power of attorney, from *P.* to sell the ship) to *R. and G.*, in which firm all the members of the firm of *R. and P.* were partners, except *P.* The plaintiffs filed their bill against *C. and G.*, *R. and P.*, and *R. and G.*, and the assignees of *M. M.*, to establish a lien on the proceeds of the ship, and on the cargo, under their agreement with *M. M.* The defendant *R.*, one of the partners in the firms of *R. and P.* and *R. and G.* were alone within the jurisdiction, and served with the subpoena: *Held*, that in the absence of *P.*, who appeared to be the registered owner of the ship, the Court could not make any decree establishing the plaintiffs' lien on the proceeds of the sale of the ship.

That, although it appeared by the result of an inquiry directed before the master, that the ship had been sold by *R. and G.*, pending the suit, under the power of attorney from *P.*, and that the proceeds had been accounted for by *R. and G.* and *R. and P.*, no fraud being proved in the transactions under which those firms had acquired the ship and the proceeds, the plaintiffs were not entitled to any relief in respect of the proceeds of the sale, in the suit in which *R.* only appeared.

That the claims of the plaintiffs in equity to the proceeds of the ship, would not be assisted by proof of notice by *P.* of the transactions between the plaintiff and *M. M.* *McCalmont v. Rankin*, 8 Hare, 1.

100. *Redemption of land-tax.—Tenant in tail.—Guardians of an infant tenant in tail redeemed the*

land tax on the entailed estate. The tenant in tail died, having bequeathed the land-tax to the next tenant in tail. The latter tenant in tail suffered a recovery, and settled the estate, but always dealt with the redeemed land-tax as a subsisting charge. The settlement contained in its operative part the usual general words—"all the estate," &c.: *Held*, that the land-tax was not merged by its redemption by the recovery, by the operation of the settlement, or otherwise, but passed by a bequest of it in the settler's will. *Blundell v. Stanley*, 3 De G. & S. 433.

101. *Tenant for life.—Sans waste.—Paramount power in trustees to fell timber.—Vagueness in pleading.*—A father, tenant for life of family estates, and a son tenant in tail in remainder, concurred, shortly after the son attained 21 years, in a re-settlement of the estates, whereby provision was made for payment of the debts of the father, to a specified large amount, and a small present provision was made for the son. The estates were previously subject to heavy mortgages. By the re-settlement, the estates were vested in trustees in fee, upon trusts to keep down the interest upon the incumbrances out of the rents, and by mortgages and sales to raise monies towards the discharge of the principal; and subject thereto, upon trust for the father for life, with remainder in trust for the son for life, without impeachment of waste, subject to a power therein-after given to the trustees to fell timber, with remainder in trust for the first and other sons of the son in tail male, with remainder in trust for the heirs and assigns of the father in fee. Power was given to the trustees at any time or times hereafter, so long as there should be any mortgage upon the estates (but, after the death of the father, not without the consent of the son, if living, in writing), to fell timber upon the estates, and to apply the proceeds in discharge of the mortgages. On a bill filed by the trustees, for a declaration of the true construction of the settlement, and for an injunction restraining the son from preventing the trustees from receiving the proceeds of the sale of timber felled with his consent, and also from felling timber: *Held*, that the limitation to the son for life without impeachment of waste was subject to the power in the trustees to cut timber so long as any mortgage debt remained; and that, if the son should withhold his consent to the exercise of the power by the trustees during his life, then the timber must remain uncut for the benefit of the inheritance. And the Court granted the injunction asked.

Upon a demurrer to the above bill: *Held*, that as the interference with the sale was by a *cestui que trust*, and not by a mere stranger, the proceedings were properly the subject of equitable jurisdiction. *Briggs v. Earl of Oxford*, 5 De G. & S. 156.

102. *Tenant for life.—Without impeachment of waste.—Injunction to restrain felling trees.—Security for loss or damage.*—Where a tenant for life without impeachment of waste had sold a quantity of timber trees, which the Court afterwards restrained him from felling, on the supposition that it would be equitable waste, the Court held that the purchasers of the timber were not necessary parties to the injunction suit, but required the plaintiff to give security to the defendant, not only for the value of all the trees which the defendant should be prevented from cutting by the injunction, but also for any loss or damage the defendant might incur or sustain by reason of his being prevented from completing the sale. *Marker v. Marker*, 9 Hare, 1.

Case cited in the judgment: *Wombwell v. Bellayse*, 6 Ves. 110, d. n.

103. *Will.—Devise of trust estates.—Admission*

*of extrinsic evidence.*—A testator devised all his real estates (except the hereditaments thereafter particularly devised), including all estates vested in him upon trust or by way of mortgage, to trustees upon certain trusts: in a subsequent part of his will, he devised his farm in A. in the possession of T. H. to T. R. He had two farms in A. called respectively S. and M., both of which were in the possession of T. H., but at different rents. On a question being raised which of these two farms the testator intended to give to T. R.: *Held*, that the devise must be taken to have been made to T. R., for his personal advantage, and not upon trust; and, if therefore, it could be ascertained that one of the farms was subject to a trust, or that the testator supposed or treated it to be so, it must then be inferred that such farm was not the one intended to be devised, but that the other was the one referred to by the testator.

In the present case it was sufficiently established by the evidence, that during the lives of the testator and his father, the proceeds of the farm, S., had been regularly paid to a Roman catholic priest, and that the testator had uniformly dealt with it in conformity with a real or supposed trust affecting it for this purpose: *Held*, therefore, that he must be taken to have intended to comprise it in the general devise of trust estates, and that consequently the farm M. was the one devised to T. R. *Blundell v. Gladstone*, 3 M. & N. & G. 692.

104. *Will.—Charity Legacies.—Abatement.*—A testator bequeathed to the treasurer for the time being of the General Infirmary at Leeds, the sum of 10,000*l.* to be raised and paid out of such part of his ready money goods and personal effects as he could by law charge with the payment of the same; and he made other charitable bequests in similar terms besides a number of bequests to individuals given generally, and not made payable out of any particular portion of his property. The testator's estate consisted partly of pure personality and partly of personality savouring of realty, the latter being more than sufficient for the purport of the general legacies: *Held* (reversing a decision of the Vice-Chancellor, Knight Bruce, by which the charity legacies were directed to abate in the proportion which the personal estate savouring of realty bore to the whole personal estate, and without reference to the question of what was the precise character to be attributed to the charity legacies, but having regard only to the intention of the testator to be gathered from the will), that the general legacies ought to be paid out of the personality savouring of realty, so as to leave the pure personality for the payment of the charity legacies.

*Held* also, though not as the ground of the decision that in the present case the charity legacies were analogous to and had the same incidents or demonstrative legacies to individuals, except so far as regarded the right of satisfaction out of other assets than the fund out of which they were directed to be paid, a right from which they were debarred by the stat. 9 Geo. 2, c. 36.

The cases of *The Philanthropic Society v. Kemp*, 4 Beav. 589, and *Sturge v. Dimsdale*, 6 Beav. 462, observed upon. *Robinson v. Geldard*, 3 M. & N. & G. 735.

Cases cited in the judgment: *Acton v. Acton*, 1 Mer. 178; *Livesay v. Redfern*, 2 Y. & C. 90; *Roberts v. Walker*, 1 Russ. & M. 752; *Attorney-General v. Lord Mountmorris* Dick. 379.

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